

STATE OF TASMANIA v ROY JOHN RILEY
COMMENTS ON PASSING SENTENCE

6 APRIL 2022
PEARCE J

Roy Riley, you are to be sentenced on your plea of guilty to aggravated armed robbery, three counts of recklessly discharging a firearm, two counts of attempted burglary, one count of aggravated assault and two counts of aggravated burglary. I also agreed to deal with a number of related summary offences.

The first set of crimes were committed on 25 June 2021. You went to the complainant's unit in Invermay with one or possibly two other people and a shortened 12 gauge shotgun. The complainant, a male, and his friend were inside. One of your group knocked on the front door. At the same time another went to a bedroom window. The complainant saw the people outside his home and shouted for them to leave but they did not do so. He went to his bedroom and looked out the window. While he was in that room a person outside fired the shotgun at the bedroom window which shattered it. The complainant fled to the lounge room. A person entered the residence through the broken window, and into the lounge, where he struck the complainant twice with an open hand. The intruder, whose face, apart from his eyes, was covered, demanded of the occupants that they hand over money and drugs. When told that there were none the intruder took the complainant's wallet, containing bank and personal cards and left through the same smashed window. You were identified as one of the offenders through DNA found on a fence outside. It cannot be established that you were the person who fired the gun or entered the home, but you are criminally responsible for all of the criminal conduct, which amounted to an aggravated armed robbery, aggravated burglary, the reckless discharge of the firearm, unlicensed possession of a firearm and possession of a shortened firearm. You were party to a common intention to at least enter the residence illegally looking for drugs or money or both, knowing that you or one of the others had the shotgun, and all that happened after that was the likely result of that plan.

The next crimes were committed about six months later on 17 December 2021. You went to a home in Burnie, intending to break in. This time you were on your own. You were on a motor bike and you took with you a loaded .22 calibre firearm. Of course it was an offence for you to be in possession of the firearm and ammunition because you had no licence. When you arrived there were two people inside the house. You first tried to get inside by bashing on the windows. You then fired a bullet through a window next to the front door. By doing so you committed the crimes of recklessly discharging a firearm and attempted aggravated burglary. All of this was observed remotely on a mobile phone through a security system by the owner's son, who with his mother had just returned in a car to see the motor cycle and someone in the yard of their home. They called the police. Presumably because you were not able to get into the house you left. The police saw you riding off. They attempted to intercept you, using lights and sirens, but you accelerated away. By doing so you committed the offence of evading police. The circumstances were aggravated because at the time you were disqualified from driving. It is not a particularly serious case of evading police because it was not prolonged and there is no evidence that you endangered anyone except yourself.

The remaining crimes were committed in the early hours of the morning on 26 December 2021 in Devonport. At around 1.30 am you and another person went to a home in Gunn Street where Quinn Hall lived with two housemates. You and your associate were both wearing masks and you had with you a handmade shortened .22 rifle with a pistol grip. At first you bashed on a bedroom window. Mr Hall went to a fly screen door and demanded that you leave. You seemingly complied but, from somewhere near the front gate, the gun was fired at

the door where Mr Hall had been standing. Fortunately, although the door to Mr Hall's home was struck by the bullet, Mr Hall was not. However, that conduct amounted to the crimes of recklessly discharging a firearm and an aggravated assault of Mr Hall. The State accepts that it was likely your associate who fired the gun, but you are criminally responsible because, again, you went there with a common unlawful purpose involving the gun and what happened was the likely result. The occupants called the police who, soon afterwards, saw you on the street and gave chase. In the course of your escape you trespassed in another nearby property where the police found the handmade firearm which had been dropped or abandoned.

During the same night, you stole a wallet, a black Acubra hat and cigarettes from inside an unlocked car parked in Ronald Street. The car and contents belonged to Jade Ellings. You then went to a home in Jingelia Place where Mary Stewart and her partner Keith Lindley lived. Ms Stewart's father was also in the house. They later concluded that they must have gone to bed and left the front door open. While they were asleep you entered the residence and, from the kitchen bench, stole a mobile phone, a set of car keys and a bag containing bank cards and other keys. Using the car keys you entered and drove away the Mitsubishi motor vehicle which was parked in the front driveway. It was worth about \$20,000. That of course amounted to motor vehicle stealing and you are a disqualified driver. The black hat you had just stolen was left in the driveway. The Mitsubishi, but not its keys, was found on the following day apparently undamaged.

You were arrested a couple of days later on 28 December 2021 at a home in Devonport. Inside the police found your backpack which contained a number of the stolen credit cards. There was a car in your driveway which had been stolen in Ulverstone by someone else on 21 December 2021. You had been knowingly using the car without the owner's consent and thereby committed the offence of motor vehicle stealing.

You are still only 18. All of these crimes were committed within about seven months of your 18th birthday. Unfortunately, as you were growing up, almost everyone in or closely associated with your family was engaged in criminal activity and drug abuse. Your father was something of a stable influence and did his best to support and encourage you, but your record shows that you have been breaking the law since you were 13. Since then a lot of people and services have been attempting to help you stay out of trouble but with little success. When probation orders were made you did not comply. When detention orders were suspended you breached them. Your record includes many instances of stealing cars and breaking into houses, and serious driving offences. You committed an armed robbery in August 2016 when you were 13 and an attempted aggravated armed robbery in February 2018 when you were 14. It is particularly concerning that over the last few years your offending has increasingly involved firearms. You were sentenced on 7 June 2019 to detention for about a year for numerous offences including recklessly discharging a firearm and possessing a .22 rifle. You re-offended almost as soon as you were released for more dishonesty and driving offences, but also possessing a shortened firearm. More detention was ordered but again you started committing offences again on your release. On 16 June 2021 you were sentenced by a magistrate to detention backdated to 1 April for offences including a range of firearm offences arising from your unlawful possession of two rifles and a shotgun on 5 January 2021, at least one of which was stolen, and possessing a homemade shortened .22 rifle on 2 April 2021. You must have been released on the day you were sentenced, or shortly afterwards, because the first set of crimes for which I am to sentence you was committed a little over a week later. You went back into custody. You were sentenced on 5 November 2021 to more backdated detention and released subject to a partially suspended sentence. However, again the

remaining crimes, and other crimes, were committed soon after your release. On 1 March 2022 a magistrate sentenced you to imprisonment for a total term of imprisonment of nine months from 28 December 2021, three months of which was suspended for 12 months. Those offences included an aggravated assault with a shotgun in July 2021, evading police and further dishonesty. They are not prior convictions but are relevant to totality and to the prospects of rehabilitation. I am informed that you would have been due for release on 27 June 2022.

Your personal circumstances were made worse in 2019 when your father died. Since then you have led a mostly itinerant lifestyle, with no stable accommodation and heavily abusing methylamphetamine. Your counsel tells me that you were under the influence of that drug when most of these crimes were committed and as a result you have limited memory of them. You managed to stay out of trouble for about three months or so at the end of 2019 when you were living with a girlfriend and her family. Your counsel argues that that period, as short as it was, gives some hope that you might be able to lead a better life if given a proper chance. She tells me also that you respond well to the routine and supervision of prison, and abstinence from drugs while in custody. Despite your youth the prison authorities have appointed you a warder. However experience has shown time and time again that you find it extremely difficult to function when you are in the community, the result of the combination of your age, the lack of good influences, the normalisation of criminal conduct, the drug abuse and your lack of secure housing. Those factors also make you a prime target for manipulation by older criminal associates. I would accept that this may explain some of your offending but, even for someone as young as you, it does not absolve you of responsibility for such serious crimes. All of the conduct was serious, but there were three separate occasions of a firearm being discharged into a residence with persons inside. On at least one occasion you fired the shot. On the other two occasions you were at least a knowing party. Each of the three occasions involved a real risk that someone could have been killed or injured and it is just good luck that they were not. I have no victim impact statements, but there could be no doubt that it must have been terrifying for those inside homes when those shots were fired and for those whose homes were invaded. Not only that, but the community is likely to be alarmed by such lawless and dangerous behaviour and is entitled to be protected from it. Law abiding members of society would rightly condemn what you did.

You made some limited admissions. You entered early pleas of guilty. It goes without saying that your youth is an important matter in sentencing. It is very important to remember that much of your past criminal conduct occurred when you were a child, and you are still not yet 19. Your youth is an important sentencing consideration because courts recognise that young offenders, due to immaturity, are more prone to ill-considered or rash decisions, have less insight, judgment and self-control and may not fully appreciate the nature, seriousness and consequences of their criminal conduct. There is greater potential for young offenders to be rehabilitated. However the lenience which is normally extended to young persons for those reasons is to be balanced against the strong need in this case to protect the public, to punish you and to impose a sentence which may make you and others think twice before acting in this way in the future. I will allow for your youth and the possibility of rehabilitation by allowing the opportunity for parole. I will suspend part of the term I impose as an incentive for you not to reoffend and in the hope that you will eventually realise that unless you do something to address the issues I have mentioned you are likely to spend much of your life in prison. The overall sentence must be a proper reflection of all of your criminal conduct, taking into account all of the victims separately affected.

Roy Riley, except as otherwise stated you are convicted on each counts on complaints 70786/21, 35552/21, 54551/21 and 54552/21. Count 1 on complaint 35552/21 is a duplication and is dismissed. I make compensation orders in favour of Heather Charlton, Mathew Hoodless, Quinn Hall, Mary Stewart and Keith Lindley and order that the further terms of those orders be adjourned for assessment. Pursuant to the *Crime (Confiscation of Profits) Act* 1993, s 16, I order that the seized firearm used in the commission of the offence in Devonport on 26 December 2021, which is of no monetary value and which served no lawful purpose, be forfeited to the State. That order causes no hardship to you or anyone else.

On count 5 of complaint 54551/21, evading police, you are sentenced to a term of imprisonment of three months, cumulative to the terms imposed by a magistrate on 1 March 2022. I order that you not be eligible for parole until you have served half of that term. You are disqualified from driving for two years from your release from custody. Count 6 on that complaint, drive while disqualified, concerns the sole aggravating factor for the evade police. So as not to punish you twice for the same conduct, that count is dismissed.

On all remaining counts I impose one sentence. You are sentenced to imprisonment for three years and three months cumulative to the term just imposed. I suspend one year of that term for two years from your release. I order that you not be eligible for parole until you have served half of the operative part of that term. Pursuant to s 92A(3) of the *Sentencing Act* 1997, I specify that the total term of imprisonment that you are liable to serve is three years and six months, one year of which is suspended for two years from your release. That term is cumulative to the term or terms imposed by a magistrate on 1 March 2022. You are eligible to apply for parole after having served half, that is, one year and three months of the total operative term of the sentence term just imposed.