

Jake Herlihy, two days ago I found that you committed a contempt of court. You were charged with contempt and did not seek to show cause as to why you should not be found guilty. You were called to give evidence at the trial of Corey Gesler. On 23 June 2022 you came into court but refused to go to the witness box, be sworn or affirmed and give evidence. Mr Gesler was on trial for aggravated armed robbery and committing an unlawful act intended to do bodily harm. Overnight between 9 and 10 January 2018 Alexander Friend was subjected to a prolonged and brutal beating at the hands of four men. He had been lured to the home of Sammual Wilmot so he could be robbed of drugs and money. He was punched, kicked and struck with a wooden chair leg. His injuries were so severe that he very nearly died. The physical and psychological impact will likely be lifelong. It was the State's case that Mr Gesler was one of the men responsible along with you, Mr Wilmot and Clinton Wilson. You were a compellable witness at his trial having earlier pleaded guilty to the same crimes. You were sentenced on 24 February 2020 to imprisonment for four years and nine months from 14 January 2018, with eligibility for parole after having served half of that sentence. Your sentence was discounted because you indicated a willingness to give evidence at the trials of Mr Wilmot and Mr Gesler. Mr Wilson had already pleaded guilty. By the time of Mr Gesler's trial Mr Wilmot had pleaded guilty. Their sentences were also reduced because of an indication of willingness to give truthful evidence. However neither did so. Mr Wilson refused to even come to court and has been punished for contempt. Mr Wilmot gave evidence. However his evidence was unfavourable to the prosecution and it strongly appeared to me that he did not make a genuine attempt to give a truthful account.

Your unwillingness to give evidence was ameliorated to some extent because evidence of some of the statements you made to the police when you were interviewed shortly after the crimes were committed was admitted under the *Evidence Act*, s 65. A similar course was taken with what Mr Wilson told the police. Evidence of what Mr Wilmot told the police in his interview was admitted under s 66. It was not necessary to delay or abandon the trial.

The jury found Mr Gesler guilty of both crimes. Nevertheless your contempt should be regarded as a serious one. The evidence you could have given was important. You were present at the time the crime was committed and could have given direct evidence of the role played by Mr Gesler. The refusal to give relevant and admissible evidence, especially for such serious crimes, undermines the rule of law and the administration of justice. Courts decide cases on the basis of the evidence and, with very few exceptions, each member of society owes a duty to every other member of society to attend court, be sworn or affirmed to give evidence, and to give truthful answers to questions properly asked, when called upon to do so. When sentencing a person who refuses to comply with that duty it is necessary to not only punish that person and denounce the contempt, but also to make clear to others the likely result in the hope of reducing the chance that he or she will act in the same way.

Your refusal was a considered one, made after you had obtained legal advice and when you well understood the likely consequences. Another likely consequence is that the discount on your sentence will be reviewed on appeal. It will be for the Court of Criminal Appeal to consider the relevance of the sentence I am about to impose.

Your personal circumstances are described, for the most part, in my original sentencing remarks in February 2020 and there is no need to repeat them. You are now 23. Your earliest

release date is 31 July 2024. You became eligible for parole on 15 June 2022. You have applied for parole but your application is pending. Your eligibility will be affected by the sentence I am about to impose and any future application will likely have to await any appeal such as I have referred to. You have been an exemplary prisoner. You were housed in a unit which permitted you to work in the community for five days a week. You accepted responsibility for your part in this crime at an early stage and you explain your refusal to give evidence as resulting from what I accept is a reasonable fear of being confronted by Mr Gesler in custody in the event of him being found guilty. Although it was not expressly suggested by your counsel I think that there was also likely a fear of some other recriminations in prison or following your release were you to have given evidence against another. It is in your favour that you quickly accepted that you had committed a contempt. I regard it as proper to make an order permitting eligibility for parole. Because you are still relatively young, and show good prospects for rehabilitation I will permit parole eligibility but only after you have served a term which adequately reflects the need for punishment and deterrence.

Jake Herlihy, a conviction is recorded and you are sentenced to imprisonment for six months cumulative to the sentence you are now serving. I order that you not be eligible for parole until having served four months of that term.