

STATE OF TASMANIA v DAMIEN STEVEN MATTHEWS
STATE OF TASMANIA v DANIEL JOSEPH WILLIAMS
COMMENTS ON PASSING SENTENCE

28 JULY 2022
PORTER AJ

The defendants, Mr Matthews and Mr Williams, have been found guilty by a jury of one count of attempted aggravated burglary, one count of aggravated burglary and one count of aggravated armed robbery. Those crimes were respectively committed in the early hours of the mornings of 30 and 31 January 2020, and they relate to hotel premises known as the Foreshore Tavern. At the trial, the primary evidence against the two defendants was eye-witness testimony given by Patrick Holmes, an accomplice, who directly implicated them. Holmes had previously pleaded guilty to these two crimes and, on 5 November 2020, was sentenced to a term of imprisonment. The facts as I find them to be are as follows. Holmes met Matthews when they were both working for a local horse trainer. They had some things in common, mainly a methamphetamine habit and a strong attraction to gambling. In late 2019, Matthews told Holmes that he was struggling for money and knew of "a job" that would yield a lot of money. Holmes was struggling for money himself. Ultimately, in the few days leading up to the crimes, the two discussed the plan in detail and Matthews brought the defendant Williams into the group. Matthews was familiar with the venue, and knew the name of the assistant manager, Robert Manning, who lived in a unit upstairs at the rear of the tavern. The plan, devised by Matthews, was for Holmes and Williams to go into the tavern, with Matthews keeping a look out. As was conceded by his counsel, Matthews' role was no doubt chosen to avoid the risk of his voice being recognised. Holmes rented a vehicle for the purposes of carrying out the crime, paid for by Matthews, and Williams obtained a firearm in the form of a sawn-off single barrel shot gun. In the early hours of Thursday 30 January 2020, the group drove to the area and parked in a street to the rear of the tavern. Holmes and Williams went to the building while Matthews remained in the vehicle as a look out. The two men went to where Mr Manning lived, and tried to gain entry to the unit through windows without success. They then attempted to raise Mr Manning by knocking on the door, but concluded that he was not present and left. The group returned in the early hours of the next morning, with the same procedure being followed. This time, Holmes and Williams entered Mr Manning's unit by climbing through an open window, and made their way to his bedroom. Both men had their faces and hands covered. Williams had the firearm. They woke Mr Manning by calling out his first name with Williams saying that they were there to rob him and that it was their "pay day". Mr Manning was told to get dressed and to get the keys to the tavern. When in the lounge room Mr Manning switched on the light and saw Williams with the firearm. With the keys, Mr Manning was directed to the tavern office where he unlocked the door and the three men entered. He was directed to unlock the cash cabinets, which he did. Holmes took money from the cabinets while Williams took Mr Manning to the safe and told him to open it. There was a number of attempts to get the safe open. Due to Mr Manning's state of stress and fear, he was unable to operate the mechanism for quite some time. Williams took over and unsuccessfully tried it himself, but Mr Manning finally opened it. The entire contents of the safe was removed. That consisted of bundles of cash. That was packed into various bags that were found in the office. Some keys and room swipe cards were also taken, along with a substantial quantity of cigarettes. Holmes disabled the landline phone. That suggestion came from Matthews. Williams took a bottle of vodka from the bar and together with Holmes they poured it around the office in an effort to cleanse the area of their DNA. Williams tied Mr Manning's hands behind his back with a power cord. The men left him on his stomach on the floor in the office. Holmes left with all of the cash in one bag, with Williams with the firearm in a box and the cigarettes. Eventually Mr Manning made his way outside and was able to attract the attention of the newspaper delivery man who freed him and raised the alarm. I note that the door to the

bar was unlocked at 1:56am and it was 2:25am when Holmes and Williams left. They ran back to the vehicle where Matthews was waiting. They went to Holmes' short term rental unit at Midway Point. The money was counted and divided. Matthews left in a taxi at about 4.35am, leaving the other two behind. Williams was found the same day on Seven Mile Beach, very badly drug affected. The firearm was found partially buried in the sand next to him. It was unloaded when it was found. Whether or not it was loaded at the time I cannot determine, but Mr Manning was of course not to know if it was or was not. On 2 February Holmes was arrested at Launceston airport attempting to leave the State. Matthews was arrested in a room at Wrest Point Hotel in the afternoon of 4 February. A total of \$87,305.47 in cash was stolen, along with a considerable quantity of cigarettes and miscellaneous items. \$14,212.70 in cash was recovered from Holmes along with \$735 worth of cigarettes. Some of the miscellaneous items were also recovered. The balance of the cash however, is unaccounted for.

I have a victim impact statement made by Mr Manning on 7 September 2020. He describes the emotional and financial fallout for him as "utterly devastating". He had worked at the Tavern for nearly six years and very much enjoyed his job. He immediately had to take time off work, saw a psychologist and has been diagnosed and treated for PTSD and associated anxiety and depression. He has been unable to work since the incident and has been in receipt of workers compensation payments. However, part of his salary was his accommodation and he no longer has that available to him. He is living with his parents. His father is suffering from early onset dementia and he finds the home environment very hard. He feels he now has no direction and as though he was "robbed of [his] life that night".

The defendant Matthews is nearly 42, a single man but with two adult children. He has a very lengthy recorded history of offending starting as a youth. This is his sixth appearance in this Court on serious criminal charges. In October 2002, on charges of burglary, stealing and injury to property relating to a jewellery store, he was sentenced to 12 months' imprisonment with a non-parole period of 10 months. In December 2002 Evans J observed that for a man of 22 years of age, the defendant has a lengthy record of convictions mainly involving dishonesty. On charges of burglary and stealing again involving a jewellery store, the defendant was then sentenced to 12 months imprisonment cumulative to the existing 12 months sentence, with parole eligibility of 9 months. In February 2004 he again appeared before Evans J for similar offending. His Honour noted the earlier sentences and imposed a sentence of 9 months imprisonment cumulative, with 6 months parole eligibility. In May 2007 Evans J dealt with the defendant and three others for conspiring to commit a crime of escape. Two of the other defendants were inmates at Risdon Prison, while the defendant was not an inmate at the time. The fourth defendant was a prison officer. A firearm was involved in the incident. The defendant was convicted of conspiracy, and – arising out of different incidents – crimes of causing grievous bodily harm and trafficking in a controlled substance. He was sentenced to a cumulative total of 6 years and 9 months imprisonment with parole eligibility of two-thirds; that is 4 years and 6 months. Among other types of offending, Evans J then noted 27 convictions for burglary, 22 for stealing, 13 for destroying or injuring property, 4 for assault, 6 for assault police and 35 for other miscellaneous anti-police offences. Lastly, on 4 April this year, the defendant appeared with two other accused before Estcourt J on charges of aggravated burglary and aggravated assault committed in February 2019. The defendant was sentenced to 2 years' and 6 months' imprisonment backdated to 25 November 2021, with parole eligibility of one half, a sentence to which I will return. It follows that he is presently serving that sentence and he is eligible for parole on 24 February next year. At the time of these present crimes, the defendant was the subject of two suspended terms of imprisonment. The first, of two weeks' duration, was imposed in March 2018 for disorderly conduct. The second sentence, imposed

on the same day, is one of three months' imprisonment for breaches of an interim restraint order. Application has been made to activate the sentences and the defendant has not argued that it would be unjust to do so, but notes the power to order them to be served concurrently, and the existence of the present sentence. Other relevant personal circumstances are as follows. He left school after completing grade 9 and started to associate with apparently anti-social group of people about three to four years older. Early offending saw him in Ashley where it seems that he had a difficult time. While in prison in Risdon in his early 20's he completed a painting and decorating course and was able to find employment in that area on his release in 2004. Unfortunately that employment ended as he was not allowed on certain sites in respect of which his employer had contracts. He continued to offend. Things become more problematic due to his introduction to methamphetamine in 2014. He became a chronic user in 2015 after his brother committed suicide. He has participated in some drug rehabilitation courses when not in prison included in which was a residential ten week program. He managed to achieve a period of 12 months drug free which he regarded as a major achievement. He obtained the employment at the stables in 2018. Regrettably he returned to drug use. I am told he has intent on pursuing drug and alcohol rehabilitation courses in prison when they are available to him, and generally wants to address his chronic substance abuse. The defendant Matthews has been in custody from 7 July 2021 serving terms of imprisonment that have overlapped. In backdating the April 2022 sentence, time spent in custody on these matters was taken into account. His present sentence expires in May 2024 and he is eligible for parole on 24 February 2023.

The defendant Williams is now nearly 44 years old. Although he does not have a record of similar length to that of the defendant Matthews, this defendant's record contains an alarming number of convictions for similar crimes, at least in a generic sense. In February 2000, on a charge of armed robbery, he was sentenced to 18 months imprisonment, 12 months of which was suspended on conditions. That involved the robbery of a service station with a threat of a blood filled syringe. In June 2001, on charges of armed robbery attempted armed robbery and stealing the defendant was sentenced to three years imprisonment, with a further three months for motor vehicle stealing. The armed robbery again involved a service station with a threat of a blood filled syringe. He was released on parole in August 2003 and some five years passed without offending of any note but generally started offending started again in early 2008. In June 2011 he was convicted of armed robbery. This involved demanding money from a teller in a bank while carrying a tomahawk and a toy pistol. He was sentenced to three and half years' imprisonment with a non-parole of two and half years. He was released on parole in August 2013 but that was revoked about six weeks later. In March 2015 on a charge of attempted armed robbery he was sentenced to four years' and three months' imprisonment with a non-parole period of three years. That involved attempted robbery of a bakery with a threatened use of a hammer. Shortly after that sentence was imposed, three months was added in the Magistrates Court for offences of dishonesty post-dating the indictable matter. The defendant Williams has been in custody on the present matters since being arrested on 1 February 2020. The underlying cause for this level of offending is drug addiction. He began using drugs at an early age. He experienced a psychotic episode when he was 18 and from that time was diagnosed with and treated for depression and anxiety. As I have noted, he has shown the ability to lead a life without offending when free from drugs. On his release in 2003 he began a relationship with a woman with whom he has 2 children. He was gainfully employed and essentially led a normal family life. The relationship break up saw him return to drug use. That drug use was significant and ongoing. I was told that for the lengthy period he has now been on remand he has had no difficulties with prison authorities. His mental health issues have been treated with appropriate medication. I am told that he has not used illicit substances. The evidence in the trial makes it plain that he was very heavily using drugs at the time. It seems that he had a recent relationship

with a woman which ended and which caused the particular bout of heavy drug use. He had been living in the North of the state but came to Hobart following the break up. He was essentially homeless and experience bouts of psychosis. I am told he has little recollection of the offences apart from being that the unit in Midway Point and being taken into custody on the beach. Footage from a service station camera on and from police body cameras shows that Williams was severely affected by drugs shortly after the time the trio were counting the money at Holmes' unit. Holmes' evidence was that in the unit, he seemed to be preoccupied washing coins in the bathroom. It was put on Williams' behalf that I should find he received a negligible amount, in comparative terms at least, of the total amount stolen. However, the evidence does not permit that finding; nor conversely, can I be satisfied beyond reasonable doubt that he took an equal share, or of what his share may have been.

The crimes of attempted aggravated burglary and aggravated burglary are associated with the completed crime of aggravated armed robbery. That crime is plainly regarded as a generically serious crime, and I regard the facts of that crime as a serious example of it. It involved pre-planning with a degree of inside knowledge. The plan was perused over two nights after a lack of success on the first night. The assistant manager, Mr Manning, was targeted as a means to gain access to where the cash was kept and he was forced with the threat of a sawn-off shot gun to open places where cash was kept. As is not uncommon in this type of case, the incident has had dramatic adverse effects on his life. It is likely he will continue to suffer well into the future. A large amount of money was taken, along with other items, and a significant proportion of the cash has not been recovered. Factors of deterring others from similar crimes and of condemnation have a great degree of prominence in the sentencing process. In addition, in respect of both defendants in addition to the issue of specific deterrence, there is now an aspect of public protection. The motive was to get money to fund addictions, in particular methamphetamine addictions. In neither case was it suggested there were any circumstances giving rise to the addiction which would warrant a degree of leniency. Each has had many deterrent sentences in the past to no avail, and opportunities for rehabilitation which unfortunately have not succeeded. There is nothing in either the circumstances of the offences or personal circumstances that has any real mitigating effect. They are not to be punished for taking the case to trial but they do not have the mitigating benefit from pleading guilty or otherwise co-operating. In respect to both men very lengthy periods of imprisonment are necessary.

I turn to question of parity. In terms of the defendant Mr Holmes, he had little by way of relevant prior convictions. He is 35 years old; effectively 33 at the time. In addition to what seem some minor matters in New South Wales in 2007 and 2009, he was convicted in that State in February 2019 of three firearms offences, apparently related to the same episode and same firearm. He was made the subject of an 18 month intensive correction order. In addition to the two crimes with which I am dealing, Mr Holmes also pleaded guilty to another count of armed robbery committed in June 2019. By way of a global sentence he was ordered to serve 5 years' imprisonment with parole eligibility after serving one half. The sentencing judge said that he was entitled to a significant discount because of his early pleas of guilty, his willingness to give evidence against his co-accused, and his co-operation with police at the time he was interviewed. Holmes is a resident of New Zealand, and it was also taken into account that he would be incarcerated away from his family, and possibly in protective custody for the time of his sentence. In my view there is little to be gained from attempting to assess that part of the global sentence attributed by the sentencing judge to these crimes. Disparity between what might result from that assessment and what might be the appropriate sentences for these defendants, even marked disparity, is justifiable by the differences in personal circumstances

and specific matters that were said to give rise to the significant discount. As to these two defendants, there is little, if anything, that justifies a significantly different approach in terms of involvement. Counsel for Matthews accepted that they were all equal participants. Williams provided the firearm and kept it with him during the robbery. Matthews did not go to or enter the premises, but the plan was essentially his, and his knowledge of the Tavern was essential. However in his case, albeit in a very long record, there are no convictions for robbery in any form, and there is also the question of totality. The application of that principle arises in two ways. First, he is being sentenced for three crimes arising out of really what was one transaction, and it arises because he is now being sentenced while serving a lengthy term of imprisonment. In short, the resultant total from the sentence to be imposed must reflect the totality of the criminal behaviour and be appropriate for all of the offending. The principle cannot be applied to the extent it results in an unjust penalty reduction in cases of multiple offending. I have read the sentencing judge's comments as to the offences the subject of the present sentence, which were committed on 17 February 2019. Matthews and two others went to a residence in order to recover a debt said to be owed to Matthews. One of the men fired two shots into the house, and one or more entered and tried to break in to where the residents were. There are some similarities with the present crimes, but the incident was about a year earlier and cannot be said to be part of a course of conduct, and that attracts little weight. Nonetheless, I bear in the mind the length of time for which the defendant Matthews has now been in custody, and the need for proportionality in relation to the entirety of his relevant offending. Generally, there are proper reasons to draw some distinctions and to make some allowances in his favour.

Mr Matthews and Mr Williams. Mr Matthews, I will deal with you first. I have set out the facts, your personal circumstances and the relevant considerations as I see them to be. I will first deal with the suspended sentences. There is no reason not to activate them. I activate the sentences of two weeks and of three months' imprisonment both imposed on 29 March 2018, and order that they be served concurrently, and both will commence at the expiration of the sentence presently being served. On the three crimes before me you are convicted and sentenced to 5 ½ years' imprisonment and, as I see no good reason to do otherwise, that will be cumulative to the sentences I just activated. I will make an allowance for parole eligibility and I order that you not be eligible for parole until you have served 3 ½ years of the total of 5 years and 9 months of the sentences I have activated and imposed.

Mr Williams, in your case also, I have set out the facts, your personal circumstances and the relevant considerations. You have a bad record of similar offending. You are convicted and sentenced to 6 years' imprisonment to commence on 1 February 2020. I cannot say that you are completely incorrigible with no prospects of reform and rehabilitation, and I order that you not be eligible for parole until you have served 4 years of that term.

I make compensation orders in favour of Pentagon Group Hotels Pty Ltd and Chubb Insurance Australia Ltd; both orders are for compensation to be assessed, and I adjourn both applications to dates to be fixed.