

STATE OF TASMANIA v TPC
COMMENTS ON PASSING SENTENCE

15 DECEMBER 2022
JAGO J

TPC you have pleaded guilty to one count of aggravated armed robbery. The crime was committed on 9 July 2022. You were 16 years of age at the time of the crime. You were in the company of an adult, KM. The two of you placed an order with Domino's Pizza. You used a delivery address at which neither of you resided. The delivery address was around the corner from the unit where you were then staying.

At approximately 10.00 pm, the Domino's delivery driver made her way to the delivery address. She had the pizza order, together with a cash float bag containing approximately \$250.00. The complainant parked the car opposite the deliver address and proceeded to get out with the pizza delivery and cash bag. You and your adult accomplice approached her. Both of you were wearing bandanas covering a part of your faces and had hoods pulled up over your heads. You carried a knife, which resembled a kitchen knife. Your accomplice carried a metal cap gun. As you were approaching the driver's door, you said words to the effect of "Hi. We are robbing you." You then told the complainant you were hungry and wanted food. Your accomplice gestured towards the complainant with the gun, but did not point it directly at her. It was nevertheless close enough that she could have reached out and touched it. The complainant placed the delivery bag on the ground and sat back in the driver's seat, initially retaining the float bag. You told the complainant that you wanted the money as well and pointed the knife towards her. The knife came within an arm's length of her. The complainant placed the float bag containing the cash on top of the delivery bag. You then said words to the effect of "I promise this won't happen to you again." You and your accomplice picked up the delivery and float bags and ran from the scene.

The complainant returned to her place of employment and reported the matter. Police were contacted. They attended and located the delivery and float bag inside a bin, situated near to the unit where you and your accomplice were staying. It was around the corner from where the delivery driver had parked. When police searched the unit, they found the main of the pizza delivery order and a metal cap gun. Both you and your accomplice were arrested.

You participated in a record of interview. You told police that you had been "going through a bit of a depressive episode". You said you and your accomplice had been consuming a large quantity of alcohol and had smoked some cannabis. You said you were intoxicated and hungry. Initially, you claimed the pizzas had been delivered to the unit by a person named Peter and denied any involvement with the robbery. Once the interview was terminated however, you became very emotional and then admitted to police that you had, in fact, robbed the complainant.

As noted, you were 16 years of age at the time you committed this crime. You have no prior convictions. Your adult accomplice is still before the Magistrates Court. You have entered a plea of guilty to this crime at a very early opportunity, having pleaded guilty in the Magistrates Court on Complaint. You therefore receives the full mitigatory benefit of an early plea of guilty. I am satisfied your plea of guilty represents not only an acknowledgment of wrong doing and preparedness to accept responsibility for your behaviour, but is also reflective of genuine remorse. I note that during the sentencing hearing, you offered, via your Counsel, an apology to the complainant. It was an apology in your own words and it demonstrated insight into the harm you had caused to the complainant. You also offered to the Court an apology for your behaviour. Again, I accept this was reflective of genuine remorse also.

Of course, your behaviour was most serious conduct. I accept you were intoxicated at the time, but that in no way provides any excuse and does not reduce the seriousness of your conduct. This was a cowardly attack, two onto one. It involved the use of weapons, although I accept the weapons were not used in an emphatically threatening manner. Nevertheless, the presence of the weapons would, undoubtedly, have been intimidating and concerning to the complainant. She, of course, was not to know what you and his accomplice might do. I have read and considered the complainant's Victim Impact Statement. She found the experience very frightening. She held two positions of employment at the time of the incident and was unable to continue in either because of the trauma she experienced following this. That created financial difficulties for her. The complainant was also in year 12 when the incident occurred and was unable to focus on her studies and her marks subsequently suffered in what is a very important school year. She experienced anxiety and panic attacks following the incident.

Your background and circumstances are relevant to sentencing. I have received a detailed Youth Justice Pre-Sentence Report. There is no question your childhood and adolescence was highly disadvantaged and unstable. You have an extensive history with Child Safety Services due to cumulative harm, including neglect, health and hygiene issues, exposure to drug use and violence within the home. You were removed from your mother's care in 2010 and since that time have been subject to various placements. Pleasingly, in more recent times, you have been able to obtain stable accommodation in an independent unit. Since moving into this unit, there have been observations of improvements with your behaviours.

You have a complicated mental health history. Whilst there has been some uncertainty associated with a formal diagnosis, it is likely that you suffer from depression, Post-Traumatic Stress Disorder, Attention Deficit Hyper Activity Disorder, Autism, Reactive Attachment Disorder and emerging Borderline Personality Disorder. You have experienced episodes of self-harm in the past. You are currently engaged with a psychologist. It is likely that you will require ongoing support and referral to more intense therapies and interventions. It has been identified by numerous mental health professionals that you have complex needs and it is likely to require ongoing targeted mental health assistance into the future.

You are a proud indigenous man. Your indigenous culture is rightfully very important to you. You have had an interrupted education and you have ongoing literacy issues. You are, nevertheless, intelligent and well capable of learning. You have had ongoing drug and alcohol issues, reflective perhaps of your mental health difficulties. I note you are working to address such issues, but it will take time and perseverance. In my view, the complexity of your background and, in particular, your mental health difficulties, reduces your moral culpability to a moderate degree. A period of detention, I accept, would be onerous for you and carry the risk of adversely impacting your mental health.

There is no question that if this crime had been committed by an adult, a substantial sentence of imprisonment would be imposed. As I have noted, it was most serious conduct. However, because of your age and the provisions of the *Youth Justice Act*, I am required to impose a sentence that places your rehabilitation and long term welfare as the primary focus. The Youth Justice Report recommends a probation order. I certainly think there is merit in a sentence which provides ongoing support for you, but the seriousness of the offence also needs to be marked, by, in my view, the imposition of a period of detention. Taking into account your early plea of guilty, your lack of prior matters, what I accept is genuine remorse and your personal circumstances, it is appropriate that I wholly suspended the period of detention I

impose. That suspended detention order will reinforce and facilitate your ongoing supervision and encourage your rehabilitation. Given your age and the matters that I have referred to, I will not record a conviction.

The orders I make are as follows:

1. Without recording a conviction, I impose a detention order for a period of ten months. I order that the whole of that period be suspended for a period of 18 months. The suspended detention order will be subject to the usual conditions prescribed by the legislation, which are:
 - (a) During the period specified in the order, you must not commit another offence which, if committed by an adult would be punishable by imprisonment;
 - (b) During the period of suspension, you must report to the assigned Youth Justice worker as required by that worker;
 - (c) During the period of suspension, you must receive visits from the assigned Youth Justice worker as required by that worker;
 - (d) You must notify the assigned Youth Justice worker of any change during the period of suspension of your residence, your employment, your school or other education or training establishments before or within two days after that change;
 - (e) During the period of suspension, you must obey the reasonable and lawful instructions of the assigned Youth Justice worker;
 - (f) You must attend educational, personal, health or other programmes as directed by the assigned Youth Justice worker;
 - (g) You must, as directed by the Secretary, submit to testing for controlled substances or alcohol; and
 - (h) You must undergo medical, psychological, psychiatric or drug counselling or treatment as directed by the assigned Youth Justice worker.

I appreciate that those matters are quite lengthy to take in, you will be provided with a written copy of this order that sets out all of the conditions that attach to the suspended detention order.

I direct that you report to a Youth Justice worker by 10.00 am tomorrow.