

Mr Cruse you have pleaded guilty to a charge of armed robbery contrary to s 240(3) of the *Criminal Code*. Your offending occurred on 22 March 2019, and whilst you were on parole. On that date you entered a pizza store at Risdon Vale at about 9.20pm. The complainant emerged from the back kitchen area of the store to find you standing there armed with a large kitchen knife about 20 centimetres long. You were dressed in dark clothing, wearing blue latex gloves, and your face was covered by a dark blue hockey mask. You pointed the knife at him and said "give me the money from the till, the notes only". He complied and handed you \$550 in notes which you placed into a plastic shopping bag. You then asked him to smash the CCTV box and the internet box within the store, which he did. You asked him to give you all the personal phones in the store. He complied with that direction giving you his mobile phone, his fiancé's mobile phone, and the store's landline.

You asked him if anyone else was in the shop and you were told that his fiancé was out the back, but that she was pregnant and "wouldn't" do anything." You yelled for her to come out and then told the complainant and his fiancé to lie on the floor with their heads on the ground. You left the store on foot. Police were called.

A knife matching that used in the robbery was found the following day about 400 metres from the scene. A forensic examination produced no incriminating results. At the time of the crime no suspects had been identified, but in August 2019 you committed an armed robbery at a bottle shop nearby, in similar circumstances, also using a knife. Police then identified you as a suspect for this crime. You were interviewed on 8 December 2020. You were co-operative during the interview and made admissions including, that you had gotten drunk and run out of alcohol and thought the best option was to rob the pizza shop. You admitted wearing the mask, the gloves and having the kitchen knife. You admitted taken the phones, and that you had told the complainant and his fiancé to get on the ground. You said to police that you did not intend to use the knife, admitted asking the complainant to smash the camera device in the store and told police that you ran into the bush and changed your clothes. You then went home before heading into the city to spend the money drinking. The phones that you had taken were discarded in a creek and the mask, gloves and knife were left in the bush.

At the request of your counsel I obtained a forensic mental health report in relation to you. I have considered all of that report. Relevantly for the purposes of sentencing, Dr Atherton opines that your conduct in this instance "is not explained as a consequence of mental illness."

Two previous reports in relation to you, one prepared by Dr Colquhoun, and another by Dr Jordan in January of 2020 opine that whilst on parole you had difficulty coping in the community. Indeed it was noted in Dr Jordan's report that you felt more comfortable in prison. That was because the prison environment provided you with "structure and certainty". It was on that basis (suggested in respect of the offending in August 2019, and not the offending I am sentencing you for today), that he considered you were in part motivated by desire to be returned to prison. Dr Atherton does not share that view in respect of this offending. He describes your offending as acquisitive in nature, and I accept his opinion that you acted in order to satisfy your immediate needs for alcohol. There is nevertheless considerable support for the view that you are suffering from mental health conditions. These include a personality disorder, but not a personality dysfunction, that you have a substance abuse disorder, predominately with alcohol and also in respect of some illicit substance abuse including

cannabis and amphetamine, and that you exhibit psychotic systems associated with drug use, though not an enduring psychotic disorder such as schizophrenia. It is observed that you have extensive historical experiences of bullying, low self-esteem, coping difficulties, and cognitive limitations. In that regard, you have been diagnosed with an intellectual disability. You have an IQ of 67 suggestive of a mild or potentially borderline intellectual disability, a preliminary assessment which Dr Atherton considers requires further investigation.

The punishment which the Court imposes upon you, cannot ignore your history of prior offending. This episode was repeated in August of 2019, and resulted in a sentence of imprisonment, imposed by Justice Pearce, of 2 years' and 3 months' imprisonment, without eligibility for parole. That is not of course a prior conviction. That sentence was cumulative to a sentence you were serving at the time for the attempted murder of your aunt. I am advised that you are not eligible for release until 15 April 2024. The sentence I impose for this offending must have regard to the fact that you are serving a sentence, and the totality principle is a relevant consideration. In that respect I must not impose upon you a crushing sentence. Nevertheless the sentence I impose must properly reflect the need to vindicate the victims of your crime and deter others. People who operate businesses late at night, such as pizza store operators, and those that provide services after hours such as taxi drivers, are entitled to the protection of the Court. A sentence which addresses that consideration will deter others from engaging in similar behaviour.

Your offending on this occasion was extremely serious. It will have terrified the complainant and his fiancé. You had no regard for them. You were intent on obtaining money to satisfy your own needs.

I have regard to your plea of guilty and I discount the sentence I would otherwise have imposed in recognition of it. I do not ignore your co-operation with police. Both of those things have utilitarian benefits which the Court should recognise when it frames sentence.

In respect of this offending I propose to sentence you to 3 years' imprisonment cumulative to any term of imprisonment currently being served by you. I further order that you not be eligible for parole. The sentence I impose must properly mark the seriousness of your behaviour and anything less than a sentence requiring you to serve a period of three years in my view fails to do that. I consider myself constrained by the operation of the totality principle from imposing a longer head sentence with a parole period. I accept Dr Atherton's opinion that a supervision order is not an appropriate order in the circumstances of this case for the reasons expressed by him. Most particularly, that there are significant practical difficulties attaching to such order in your circumstances, and that the risks and needs with which you present, are not most appropriately addressed in that way.

I record that I have previously made a compensation order sought by the State in favour of the complainant and the complainant's fiancé, pursuant to s 68(1) of the *Sentencing Act*.

The net effect of the sentence I have imposed upon you today Mr Cruse is that you are serve three years' imprisonment which sentence commences upon the conclusion of any sentence you are currently serving. That date I am advised by the State is 15 April 2024.