

COMMENTS ON PASSING SENTENCE

TENNENT J

Ms Bessell, Mr Wynwood, you have each pleaded guilty to one count of dealing with proceeds of crime contrary to the Crime (Confiscation of Profits) Act 1993, s66A(2).

Between 13 April 2015 and 12 July 2015 people known to you both used stolen credit cards to make online purchases of electronic gift vouchers from Sanity Australia. Those gift vouchers were then provided to you to use. Each of you then went to a Sanity store and redeemed vouchers, exchanging them for goods. You were both aware that the vouchers had been unlawfully obtained.

As the vouchers had been purchased with compromised credit cards, the relevant financial institution reversed the transactions. The consequence was that the Sanity stores were not compensated for the purchases made with the unlawfully obtained gift vouchers. On 15 July 2015, staff at the Sanity store in Devonport advised police that there were three people in the store checking the status of vouchers. Those vouchers were the ones purchased with compromised credit cards. Police attended and located both of you, and a third person, a youth. All three of you were taken to the Devonport Police Station and interviewed.

As to you, Mr Wynwood, you admitted to having received \$600 worth of vouchers from the youth you were caught with and another male. You initially thought they might have been legitimate but quickly realised they probably were not.

You used the vouchers to purchase DVD box sets. You also agreed you went to Sanity to check the balance of any unused portion of the gift vouchers you had.

As to you, Ms Bessell, you admitted having received around four electronic gift vouchers from a male known to you to be an associate of the youth you were caught with. Each voucher was for \$300 and you received them every fortnight. You admitted using some of the vouchers to purchase DVD sets and said you planned to sell them or give them to your sister. You also admitted going to Sanity to check the balance of any unused portion of the gift vouchers you had. You, it seems, knew the youth had been purchasing stolen credit card details online and using them.

It is accepted that neither of you were actually involved in the unlawful sourcing of credit card details or their use to buy the vouchers.

At the time of this offending, the two of you were living together and sharing accommodation with the youth. Police recovered from that accommodation a significant quantity of DVDs and CDs purchased using the compromised credit card details.

As to you Mr Wynwood, you are 20 years old. You have some minor criminal history as a youth. On 18 June 2013, you were dealt with in respect of an assault. A pre-sentence report was obtained. That outlined an early diagnosis of ADHD, a dysfunctional upbringing, an unsatisfactory educational history and behaviour over a number of years which showed traits of violence and lack of control. Medication for ADHD and psychiatric intervention had been attempted. On that occasion, you

were released without conviction on a number of conditions which involved supervision by youth justice workers, attendance at programs as directed and medical, psychiatric and psychological assessments over the next 12 months.

There was some further minor offending in 2014. On 28 October 2015, that is, after the offending I am now dealing with, you were dealt with for another assault and a breach of a family violence order which actually occurred in October 2014. You were convicted and fined \$500. It appears that an order was also made pursuant to the Sentencing Act, s 7(f), which required you to agree to participate in the Challenging Abusive Behaviours Program with Catholic Care. You have, I am told, attended some group sessions in that program, but are to undergo some one on one sessions.

You remain living in a relationship with Ms Bessell.

I sought an updated pre-sentence report in relation to you. That report outlined regular cannabis use and a level of social isolation. There was a recommendation that you were suitable to perform community service and probation. It was indicated that, were probation to be ordered, it would focus on issues such as alcohol and drug use, anger management and general pro-social life skills.

As to you, Ms Bessell, you are 19 years old. On 13 April 2015, you pleaded guilty to one count of stealing. The offence occurred in January. You were released without conviction on a two year undertaking to be of good behaviour. That undertaking clearly meant little because the offending you are now being dealt with started immediately. I note that I have been told this morning that it is proposed that proceedings be taken against you in relation to that breach of undertaking.

At the time I heard a plea in mitigation I was told that you had part-time employment with Banjos in customer service, and that that was your first job. You hoped to continue generally in the hospitality industry and gain some qualifications. I was also told you had what appeared to be a disrupted upbringing, with periods of homelessness. Your education was limited and you have little family support. You receive a disability support pension. You suffer from anxiety and depression and have a mild intellectual disability and personality disorder. You have spent periods in the Spencer Clinic following self-harm and feelings of suicidal ideation. You have been engaging with relevant services, and that was confirmed in letters supplied by your counsel.

You accepted your behaviour in this matter was foolish. You took an opportunity when your young flat mate offered vouchers in lieu of a rent contribution. Both you and Mr Wynwood made admissions, were co-operative with police and entered early pleas.

I also obtained a pre-sentence report in relation to you. I was concerned that you have difficulty dealing with stressful situations and that you might very well lose the work you had when your employer became aware of your offending. That report indicates you are no longer working at Banjos but are hoping to find other work. As to the offending, there was some concern expressed that, as a result of your mild intellectual disability, you might not have understood how serious the offending was that you became involved with.

As to the issue of community service dealt with in that report, while you said you would do it, you said you did not want to work in a group of more than five due to your anxiety. Community Corrections have indicated they can work with that. You were assessed as not needing the support of probation.

Each of you has committed a serious offence. It seems at the end of the day you may have actually gained nothing. You were co-operative with police and entered early pleas. There must be a deterrent sentence, but clearly one which recognizes your respective personal circumstances and difficulties.

In all the circumstances, the orders of the Court are that:

Ms Bessell, you are convicted of one count of dealing with proceeds of crime contrary to the Crime (Confiscation of Profits) Act 1993, s 66A(2).

You are ordered to perform 100 hours of community service.

You are to pay a victim of crime compensation levy of \$50 within 28 days.

Mr Wynwood, you are convicted of one count of dealing with proceeds of crime contrary to the Crime (Confiscation of Profits) Act 1993, s 66A(2).

You are also ordered to perform 100 hours of community service.

You are also to be subject to a probation order for a period of 12 months.

You are to pay a victim of crime compensation levy of \$50 within 28 days.

As to both you and Ms Bessell, you are, pursuant to the Sentencing Act, s 68, jointly and severally to pay to Sanity Music Stores Australia Pty Ltd, 36-48 Ashford Avenue, Milperra, New South Wales, such sum as may be assessed by way of compensation, with the assessment to be adjourned to a date to be fixed.