

STATE OF TASMANIA v BJM
COMMENTS ON PASSING SENTENCE

8 MARCH 2016
PEARCE J

BJM, you were found guilty by a jury of one count of aggravated robbery. You were sentenced by Estcourt J on 9 December 2013 to imprisonment for six months, wholly suspended for two years. His Honour made two other sentencing orders – a community service order that you perform 90 hours of community service and a probation order for two years. You admit that you have breached all three of the orders. You breached a condition of each of the orders by committing an offence punishable by imprisonment. You breached conditions of the community service order by failing to complete 69 of the 90 hours and accumulating 18 unauthorised absences from scheduled community service between 14 January 2014 and 2 August 2014 when, after repeated informal and formal warnings for non-compliance, you were finally stood down by Community Corrections. You breached the probation order by repeatedly failing to attend appointments with your probation officer between 20 January 2014 and January 2015. During this period, despite many informal and formal warnings, you attended appointments only twice and contacted your probation officer on only one other occasion. You failed to make contact with Community Corrections in January 2015 even after you were warned that breach action would be undertaken.

The offences constituting the breach occurred on 3 July 2015. On that day you drove a motor vehicle when the holder of a provisional licence with alcohol in your body at the level of 0.034%. No premium had been paid on the car you were driving. Both offences are punishable by imprisonment. You were sentenced by a magistrate on 9 October 2015. You were fined \$800 and disqualified from driving for 6 months.

If a condition of a suspended sentence is breached by committing an offence punishable by imprisonment, the court must activate the sentence held in suspense unless of the opinion that it would be unjust. In considering whether activation of a sentence of six months imprisonment is unjust in your case, there are a range of circumstances I consider relevant. Before you were sentenced, you had a very poor record for offences of dishonesty, violence and anti-social offending. You were addicted to illicit drugs and associated with criminals. The sentence was imposed for a serious offence. On 27 March 2012, when you were 17, you and your slightly older associate randomly robbed a youth you saw walking on the road of his wallet. You were the driver, but it was your associate who effected the robbery by use of a shotgun which he pointed at the victim. Your associate received a much heavier sentence. It is relevant that the breach offence is of an entirely different nature. It involves no violence or dishonesty. It does involve alcohol, but occurred when you made a misjudgement by deciding to drive after you had been out for dinner. Given that the breach occurred about 18 months after the sentence, and more than two years after the original crime, I think that activation of the sentence would be a disproportionate response. The conclusion I have reached is reinforced by the steps which you have taken in the meantime towards your rehabilitation. The sentence seems to have had effect. The period of suspension has now expired and there has been no other breach. You maintain the same employment you had when sentenced and have done well. You are highly regarded by your employer and have advanced to a position of trust and responsibility. Your mother had a great deal to put up with when you were younger but attests that you seem to have turned your life around. She wrote a letter pointing to the real improvements, with her continuing encouragement and support, you have made. Given that one of the main purposes of suspension of a sentence is to provide you with a chance to stop committing offences and improve your behaviour, it would undo the positive steps that you have taken, and defeat the main objects of the sentencing order, to send you to prison

now. Even though suspended sentences are normally regarded as a last chance, this is a case where activation of the sentence would be unjust.

The breaches of the probation order and the community service order have given me much greater cause for thought. During 2014 you showed an almost complete disregard for your obligation to comply with the orders made by the Court. Since late 2014 or early 2015, when the officers of Community Corrections finally gave up their efforts to have you comply, you have done nothing to attempt to re-engage with the service. It may be that your employment obligations made it difficult for you to attend appointments, but you plainly gave priority to your own interests, and your obvious disinclination to attend. You and others must understand that repeated and persistent failure to comply with court orders is a serious matter and must have some consequences; otherwise the force of the original order is undermined. The failure to comply with the community service order is the most serious. It was imposed not only to punish you but to allow the opportunity for you to make up for what you did. The probation order has now expired and I do not see it as necessary to extend it. The community service order is a different matter. I intend to make an order which will effectively re-instate most of the original hours and also impose a fine.

On the application for breach of the suspended sentence I find the breach established. I am of the opinion that activation of the sentence is unjust. I make no order in respect of the suspended sentence.

On the application for breach of the probation order, I find the breach established. I make no other order.

On the application for breach of the community service order, I find the breach established. I vary the sentencing order made by Estcourt J by cancelling the community service order his Honour made and substituting the following, a community service order that you serve 84 hours of community service, which is the equivalent of 12 days' work. So it is clearly understood, I record that it is intended that these hours are in addition to the 21 hours you have already performed. I also impose a fine of \$1,000. I may only give you 28 days to pay. If you require longer it will be necessary for you to enter into a repayment arrangement. It is a condition of the community service order I have made that you report to Community Corrections by the close of business tomorrow. You must make arrangements with them and, if necessary, with your employer, for the completion of the community service. You must clearly understand that if you fail to report, or if you continue to fail to perform the community service, a court may still order that you serve a term of imprisonment.