

Jason Burns was found guilty by a jury of aggravated burglary and aggravated armed robbery. The facts for sentencing largely follow from the verdicts. The jury was satisfied beyond reasonable doubt that at about 9.30 pm the defendant was one of two men who broke into the home of a man in St Leonards on 18 February 2015. The man was aged 75, completely deaf and not able to speak. He lived alone. He was in bed when he saw a torch shining in his bedroom. He tried to grab the men but they ran into the bathroom. When they emerged into the kitchen area they grabbed him and forced him to the floor. One of the men signalled that he wanted money. They picked the complainant up. One of them grabbed a serrated kitchen knife and held it towards his stomach before putting it down again onto the stove. The other man held the complainant's hands behind his back and, while also holding his neck, marched the complainant into his bedroom where they removed \$205 from his wallet. They then asked to be let out the front door with his key, after which they ran off. Unable to phone for help the complainant went to his neighbour's house.

The defendant was identified from a palm print and DNA left at the house. He was interviewed by the police on 19 July 2015 but he denied any involvement. He is almost 24. He was educated to Grade 9 when he left to take up a bakery apprenticeship. He did not stick at it. He is not entitled to the mitigation a plea of guilty would have attracted. It is however in his favour that he agreed facts which spared the complainant the trauma of having to give evidence.

The defendant has a very poor criminal record. He has many prior convictions for dishonesty and violence including one for aggravated armed robbery committed in March 2102. On that occasion he and another young male robbed two people at random in the street using a shotgun. He was sentenced in December 2013 to imprisonment for 18 months, 13 months of which was suspended. Despite earlier convictions, mostly for street offences and summary dishonesty offences, he had not been to prison before then. At about the same time he was sentenced by a magistrate to a number of concurrent short sentences of imprisonment for offences in 2012 and 2013. In the result he was released in early 2014. He quickly re-offended by committing further summary offences which also breached the suspended part of the earlier sentence. He was imprisoned and released in early 2015, only to offend again by stealing and committing an assault and a series of family violence offences. After his release on 12 February 2015 these crimes were committed less than a week later. He has been in custody on these matters since 21 June 2016 and so the sentence should be backdated to then.

The defendant's criminal history is contributed to by his abuse of alcohol and drugs. Sentencing comments in December 2013 reflect efforts then to address the problem. He made further attempts after his release in early 2014, apparently to no avail. He still enjoys the support of some of his family, in particular his mother.

These are serious crimes. The defendant went in company to a home at a time when it would be very likely the occupant would be present. When confronted by a vulnerable and elderly male, he and his co-offender used force to subdue him. The evidence satisfies me that they knew he was deaf because signals were used to ask for money and keys. It follows from the verdict that the defendant is criminally responsible for resort to the knife. I cannot be satisfied that it was the defendant who picked up the knife. I would sentence him on the basis that it is the probable consequence of the prosecution of a common purpose formed either before the

men got to the house, or while they were inside, to steal from the complainant using force to prevent or overcome resistance, that one or other of them would pick up a knife in the house to achieve that purpose.

Not surprisingly the consequences for the complainant have been severe. There had been previous burglaries at his home, including one only three days earlier. He was already feeling scared and insecure. He was subjected to a terrifying robbery in his own home. He was immediately distressed. He has not been able to return to the home in which he lived for forty years. It has now been sold and he is deprived of the enjoyment and independence he previously enjoyed by being able to live there. He and his family have been put to the burden and stress of finding other, less suitable, accommodation interstate. He still has trouble sleeping and feels scared and unsafe. Those consequences are likely to be long-lasting. The defendant had no plan to physically harm the complainant in any serious way, but the complainant was not to know that, especially after the knife was used to threaten and subdue him.

Jason Burns, you are convicted on each count. You will pay the victim of crime compensation levy of \$100 within 28 days of your release. You are sentenced to imprisonment for three years. I order that you not be eligible for parole until you have served half of that sentence. That sentence will commence on 21 June 2016.