

## COMMENTS ON PASSING SENTENCE

BRETT J

Mr Jones you have pleaded guilty to one count of robbery.

On 4 December 2015, you went with your partner and your two young children to the Bunnings warehouse at Glenorchy. The children were in a pram. You removed some tools from the shelves, and secreted them in the pram. You left the store without making any attempt to pay for the tools.

Your actions were observed by security officers. A female security officer confronted you in the car park outside the store. She identified herself, displayed her security licence and asked you to remove the items from the pram. You told her to "get fucked", and continued to walk away from the store. The security officer reached into the underneath carriage of the pram to retrieve the backpack into which you had placed the stolen property. You then punched her to the top right side of the head above the ear. You continued to punch her to the head a further four times using both fists. The officer moved away from you, still holding the backpack and was assisted by a male security guard. You then approached her again and said, "I've got a knife". You reached into your right pocket, giving the impression that you were about to remove something. You walked towards the complainant saying, "I've got a knife; I'm going to stab youse". You took the backpack from the complainant and fled.

The complainant suffered some temporary injury in the form of a graze, some swelling, restriction of movement and tenderness. She has declined to make a victim impact statement.

You were identified from CCTV footage and arrested by police on 23 February 2016. You made some limited admissions when interviewed by police. You pleaded guilty to the charge of robbery in the Magistrates Court. You have been in custody since 6 July 2016.

You are 24 years of age with a long-term partner and two children, aged 5 and 3. You have a lengthy criminal history. This history commenced when you were 13 years of age. Since then, you have been sentenced for numerous offences of dishonesty including aggravated burglary, burglary, stealing and motor vehicle stealing, both as a youth and an adult. On 5 February 2007, you were sentenced for the offence of aggravated armed robbery, committed as a youth. In 2011, a wholly suspended term of imprisonment was imposed upon you for the crime of attempted armed robbery. The sentencing comments of the sentencing judge at that time indicate that a lenient approach was taken in an effort to encourage and foster your rehabilitation. The suspended term was activated in 2012 because you committed further offences of aggravated burglary and stealing, and other offences of dishonesty during the period of suspension.

On 24 August 2015, you were sentenced by the Magistrates Court to a period of 8 months' imprisonment, of which 3 months were suspended on condition that, for a period of 2 years, you not commit another offence punishable by imprisonment. That sentence was imposed for a combination of offences, largely consisting of unlicensed

driving, driving under the influence of an illicit drug and offences against police. You had also committed some stealing offences. I do note that, apart from these stealing offences and prior to committing the crime with which I am dealing, you have not committed an offence of dishonesty since 2012. The prosecution has made an application for the suspended term of imprisonment to be activated in consequence of your commission of this offence and you have not shown cause with respect to that application.

I am told by your counsel that your motive in stealing the property from Bunnings was to obtain money to purchase drugs. I accept also that your use of violence when confronted by the security officer was a reaction to the circumstances you had placed yourself in and was not premeditated. However, the commission of the offence is serious in a number of respects. You perpetrated a brutal assault on the security officer and then led her to believe that you were armed with a knife. I accept that you were not actually in possession of a knife, but she was not to know this. You perpetrated the violence in a public place. I regard it as an aggravating factor that you committed these acts in front of your children. Your partner was not a party to your offending and your conduct placed her in an invidious position.

In the circumstances, a sentence of actual imprisonment is necessary. You are not to be sentenced for your prior offending but the commission of this offence in the light of your past record indicates a need for this sentence to deter you from future offending. General deterrence is also an important sentencing consideration in respect of a crime such as this. I accept that you regret your actions and that you are genuine in your indication in the letter you had your counsel present to me, that you intend to reform your behaviour. However, you have been offered many opportunities for reform in the past by sentencing options which have included community supervision and suspended sentences. Whilst I will allow for the Parole Board to respond to a real effort at rehabilitation by fixing a non-parole period, the need for specific and general deterrence, and the denunciation of the conduct, carries more weight in the circumstances of this matter than the possibility of your rehabilitation. In fixing the appropriate sentence, however, I will have regard to your plea of guilty.

In relation to the application relating to the breach by you of the suspended sentence imposed in the Magistrates Court, I am satisfied that the crime to which you have pleaded guilty is a new offence within the meaning of s 27(4) of the Sentencing Act 1997. I note that you committed this offence within a few months of the imposition of that sentence. It must be the case that you did so a short time after your release from prison. Given the seriousness of this offence, and your blatant repudiation of the leniency shown to you by the suspension of the sentence, I am not of the opinion that it would be unjust to activate the sentence. Accordingly, I am required to activate the sentence.

The orders I make are as follows:

- (a) You are convicted of the crime to which you have pleaded guilty.
- (b) I activate the suspended sentence of 3 months' imprisonment imposed by the Magistrates Court on 24 August 2015. That sentence will be backdated to the date that you were remanded in custody, 6 July 2016.

(c) In respect of the crime of robbery, you are sentenced to 15 months' imprisonment, which will be served cumulatively with the activated suspended sentence.

(d) Pursuant to s 17(2) of the Sentencing Act, I order that you not be eligible for parole until you have served 8 months of the sentence imposed for the charge of robbery. The practical effect of this order, having regard to the provisions of the Corrections Act, is that you will become eligible for parole after serving the aggregate of the activated suspended sentence and the non-parole period of 8 months contained in this order, which is 11 months from the 6 July 2016.

You will pay a victims of crime compensation levy of \$50 within 28 days of your release from prison.