

The defendant has pleaded guilty to one count of armed robbery. At about 9.15am on Tuesday, 8 March 2015, aged 17, the defendant entered the Eastlands Shopping Centre in Rosny. I pause to say that I am dealing with this sentence under the provisions of the *Youth Justice Act 1997*, even though the defendant appears in this Court. The defendant removed a security camera which he placed under his jumper, and he began to walk out of the store ignoring the security officer and the store manager who told him to stop. The complainant, Nikolas McKellar, began to chase after the defendant and the defendant ran through the shopping centre, past the Kmart and out towards a loading bay. There the defendant stopped and the complainant told him to give the stolen property back. The defendant pointed a knife at the complainant and stood up and held the knife out in front of him about five metres away and made stabbing motions in the air with it, saying words such as, "dog, rat, cunt, come on then". I repeat the defendant was about five metres away from the complainant. Nonetheless, the complainant felt threatened and began to back away, understandably putting his hands in the air.

The defendant ran off, throwing the knife away. The defendant took the stolen camera to an associate and sold it for \$100, believing it was valued at over \$200. Ironically the camera stolen by the defendant was actually a fake security camera, valued at about \$20.

At approximately 12.30pm the defendant presented himself to the Bellerive Police Station, telling police that he was there to hand himself in. After initially denying that he was followed by staff and had a confrontation while being in possession of a knife, he admitted that he had been involved in an altercation and that he did pull a knife out and say, "Fuck off".

He committed the crime to get money to help fund his addiction to methylamphetamine. He had used that drug for about 14 months and said that in the previous six months he was using 1 to 1½ grams per day, spending up to \$600 a day. He had sought help for his addiction on a past occasion.

The defendant turned 18 years old in July this year. He has no relevant prior convictions and has never been subject to a sentencing order before. As already noted, he handed himself in to police and co-operated fully with them. He also entered a plea of guilty at the earliest opportunity.

I have a victim impact statement from the complainant who reports that since the crime occurred he has been taking anxiety tablets prescribed by his doctor to help him with his stress, anxiety and nervousness. He says that he is not as confident as he was before the offence and is now cautious, nervous and hesitant in approaching people with the result that his sales have dropped from before the incident.

I also have a pre-sentence report from a youth justice worker who has provided me with the following information - as I should add, as have counsel. The defendant is the eldest of three sons. His father was murdered when the defendant was 17 years old – only two months prior to the commission of the present offence, in January 2015. When his father passed away the defendant began using illicit substances in a dangerous manner. He believes that if it had not been for meeting his girlfriend at that time, whom he says assisted him to minimise his drug use, he would have died. The child protection information system highlights a history of family violence incidents, neglect and homelessness. The defendant is currently living with his paternal grandmother and great-grandmother, with whom he has good relationships. His grandmother reported to the Youth Justice worker that she believed the defendant had been free of methylamphetamine for the last month or so, as of 27 September. The defendant very much wishes to cease his ice usage altogether. Youth Justice, with the defendant's agreement, has submitted a referral to Holyoake Drug and Alcohol counselling service.

In summary, the Youth Justice worker informs me that the defendant had a demonstrable history of illicit substance abuse, which is attributed to his father's death, and to which he attributes his actions at the time of this offence, (that is, his drug usage, not his father's death). The defendant has

experienced significant trauma, in particular relating to the grief and loss as a result of his father's death, and also witnessing the death of his best friend at a young age. He does however have a good support system around him. The author of the pre-sentence report specifically recommends that I consider the imposition of a probation order pursuant to s 47(1)(f) of the *Youth Justice Act*. It is believed that a probation order would allow Youth Justice to provide the defendant with support in addressing his illicit substance abuse, as well as providing appropriate referrals to assist the defendant in managing his identified grief and support in relation to his mental health. Further, Youth Justice believe they could provide support to the defendant in relation to exploring his employment opportunities and independent living once he has been able to address his substance abuse. He is not suitable for a Community Service order.

The defendant has pleaded guilty to armed robbery. If he were a year or two older I would probably be sending him to gaol. If you steal something from a shop, that is stealing, but if you threaten violence to someone when you do it, that is robbery. If you threaten violence to someone when you do that, and you are armed with a knife, that is armed robbery. Armed robbery is a very serious crime. Although I accept the defendant had no intention to use the knife he took, the complainant was not to know that. The use of the knife adds greatly to the danger of the crime and to the potential trauma and fear in victims. Sometimes people who get robbed at knifepoint have terrible psychological problems. Sometimes those problems do not develop until months or years after the robbery; something triggers it and they end up needing to see psychiatrists. I hasten to add however that this is by no means the most serious example of this crime. There was no plan to use the knife at the store to effect a robbery, however I must infer that the defendant went to the store intending to steal something and took the knife to use in the event that he was confronted. The knife was not produced until the defendant used it to attempt to deter the complainant from continuing to follow him. The complainant was five metres away, and the defendant, as I have said, ran off, throwing the knife away. This in reality is another case of shoplifting turned into armed robbery because a shop employee decided to give chase outside the precincts of the shop.

Insofar as the sentencing order is concerned, I do not impose a conviction, as I am entitled not to do under the *Youth Justice Act*, and in circumstances where a probation order is to be made specifically at the request of the Youth Justice worker in order to assist the defendant with problems, including securing employment and housing, the consequences of a conviction far outweigh its desirability. I make a probation order to operate for two years from today with the usual statutory conditions plus special conditions. The special conditions are that the defendant is to submit to testing for drug use if and when required to do so by a Youth Justice worker. He is also to undertake any medical, psychological or drug-related assessment or treatment that is required by a Youth Justice worker. In imposing those conditions I am doing nothing more than that to which the defendant has already agreed with the Youth Justice officer by being prepared to co-operate with assessment and treatment at Holyoake.

I impose the usual victim of crimes levy.

I make the following orders as sought:

1. Pursuant to s 68 of the *Sentencing Act* 1997, a Compensation Order is made in favour of JB Hi Fi Group Pty Ltd, Eastlands Shopping Centre, 26 Bligh St, Rosny Park TAS 7018, in the amount of \$20.
2. Pursuant to s 11 of the *Crime (Confiscation of Profits) Act* 1993, an order, pursuant to section 16 of the Act, is made that the knife used by the defendant in the robbery be forfeited to the State of Tasmania.

3. Pursuant to s 11 of the *Crime (Confiscation of Profits) Act* 1993, a pecuniary penalty order, pursuant to section 21 of the Act, is made in favour of the State of Tasmania in the amount of \$100, and I state that I take that into account in arriving at the penalty.