

Mr Freeman, you have pleaded guilty to one count of aggravated burglary and one count of aggravated robbery. The crimes were committed on 4 August 2014, when you were subject to a suspended sentence of four months' imprisonment which had been imposed by this Court in respect of a charge of robbery. The State has made application for you to be dealt with in respect of the breach of the conditions of suspension of that sentence, by the commission of these crimes, and you have not shown cause in that regard.

The crimes to which you have pleaded guilty were committed in the late morning. You and your accomplice entered a house by smashing the glass pane in the kitchen door and unlocking the door. You did not know whether the house was occupied. It was, in fact, occupied by its owner, a 93-year-old woman. She was there alone, was frail and had poor eyesight and hearing. Fortunately, you and your accomplice did not come into direct contact with her during the time that you were in the house. After entering the house, you went with your companion into the owner's bedroom and searched for property to steal. Your search left the bedroom in disarray, with clothing and underwear discarded on the floor and the bed. You and your companion stole \$5 in coins.

As you were leaving the bedroom, you were confronted by the owner's daughter-in-law, who had called in to check on the welfare of her mother-in-law. Your companion punched the woman in the face and you both pushed past her and ran out of the house. The use of violence turned what would have been stealing into aggravated robbery. It was not entirely clear to me as to the basis alleged in respect of your criminal liability for the use of violence. There would not seem to be any rational basis for the attribution of liability to you under s 3 of the *Criminal Code*. I was told that you played a lesser role in respect of the aggravated burglary generally and your intention was simply to act as a lookout for your accomplice. There was no suggestion that there was any agreement or understanding between you to assault any person during the course of the burglary and given that the violence was a spontaneous reaction to meeting the woman in the hallway, it is unlikely that you did anything or had the requisite state of mind required to aid or abet your accomplice in that act. However, it was accepted by counsel that your liability arises pursuant to s 4 of the *Criminal Code*, that is, it was a crime committed in the prosecution of your common unlawful purpose to break in and steal from the house. I have no difficulty accepting that the commission of the aggravated robbery was a probable consequence of the prosecution of the aggravated burglary and theft. I will determine sentence on that basis.

However, while you do have appropriate criminal liability on this basis for the crime, it is appropriate that your sentence reflects the fact that you did not directly apply force to the woman. You are properly responsible, however, for that force and its consequences because you ought to have foreseen that by breaking into someone's home in the middle of the day, you may come into contact with an occupant and violence could be the result of such a confrontation. You were also prepared to immediately take advantage of the violence perpetrated by your companion by pushing past the woman in order to make your escape. You did not pause to check on her welfare or otherwise act appropriately when you realised that the crime had escalated to aggravated robbery.

The commission of these crimes has caused considerable impact on your victims. The woman who was punched suffered pain and physical discomfort to her eye and nose area for some weeks. Understandably, she has continued to feel vulnerable and anxious and has had ongoing emotional upset as a result of what happened to her. The elderly occupant of the home, who until this time, had been determined to maintain her independence and self-reliance, manifested by continuing to live in her own home, decided after this incident that she could no longer live independently and has entered an aged care home. Her son believes that your commission of the aggravated burglary strongly contributed to a diminution of her self-reliance and her decision to stop living independently. I accept what he has said about this.

You are 47 years of age. You have a considerable criminal history, including a number of convictions for aggravated burglary, burglary and stealing. You were subject to a suspended sentence for the crime of robbery when you committed this crime. You committed that robbery when you grabbed and forcibly removed a purse from under the arm of its owner, a young woman, who had her baby in a pram with her at the time. You received a sentence of nine months' imprisonment of which 4 months

was suspended. I am required to activate that sentence of 4 months unless I am of the opinion that it would be unjust to do so. In all the circumstances, it is clearly not unjust to activate that sentence and you will be required to serve it.

I accept that you have had limited education and have some underlying issues with drugs and alcohol. I suspect that you are easily led and that that partly accounts for your involvement in this crime. I note also from the presentence report that you claim to have committed this crime because you were looking for money to steal to pay for drugs. Notwithstanding this, you certainly knew that what you were doing was wrong and chose to involve yourself with your accomplice in breaking into the home. You have been offered many opportunities by the courts in the past to obtain support and assistance with underlying issues, but you still chose to commit this crime on this occasion notwithstanding those prior opportunities.

It is appropriate that you receive a sentence of imprisonment for these crimes. They were serious crimes, they caused significant impact on innocent victims and amounted to a repetition of conduct that you have committed in the past. Your co-offender was sentenced to imprisonment for two years and three months in respect of these crimes. There are reasons to distinguish between the level of his culpability and yours. He was the one who punched the victim, and you have pleaded guilty to these crimes, whereas he did not do so. It is appropriate that you should receive some credit for the plea of guilty. I am also prepared to accept that you are remorseful for your conduct, which I think distinguishes you from your co-offender. Further, there are differences in your background, including your criminal history, and he was on parole when these crimes were committed.

The orders I make are as follows:

- 1 You are convicted of the crimes to which you have pleaded guilty.
- 2 The sentence of 4 months' imprisonment, suspended on 15 March 2013, is activated. It will be backdated to 9 September 2016.
- 3 In respect of the crimes on the indictment, I impose a global sentence of 18 months' imprisonment, which will be served cumulatively upon the activated suspended sentence.
- 4 Pursuant to s 17(2) of the *Sentencing Act* 1997, I order that you not be eligible for parole until you have served one half of each of the above sentences. The practical effect of this order, having regard to the provisions of the *Corrections Act* 1997, is that you will become eligible for parole after serving the aggregate of the non-parole periods relevant to each sentence, which will be one half of the aggregate of those sentences.
- 5 The presentence report makes a strong recommendation in favour of a probation order. I agree with that recommendation. Accordingly, and notwithstanding the fact that I have allowed for the possibility of parole, I think I should also make a probation order which will operate after your release from prison. I therefore make a probation order for a period of 12 months commencing on the date of your release from prison. The usual conditions will apply. These include that you will need to report to a probation officer within 1 day of release from prison. There will also be a further condition as follows: that you must undergo assessment and treatment for alcohol or drug dependency as directed by a probation officer.
- 6 You will pay Victims of Crime Compensation Levies of \$100 within 28 days of your release from prison.