

The defendant was tried on one count of recklessly discharging a firearm. It was alleged that on 14 December 2013 he recklessly and without due regard to the safety of other persons and property, discharged a firearm across Franklin Street, Swansea. He was found not guilty on the ground of insanity. The issue arises as to what order should be made under s 21 of the *Criminal Justice (Mental Impairment) Act 1999*. It is only necessary to set out a short summary of the incident. At about 4.40pm on 14 December 2013 the defendant drove to Franklin Street, which is the main street in Swansea. He parked near a takeaway café. He had with him a .303 rifle, ammunition and a shortened 12 gauge single barrel shotgun. Several people heard a gunshot and looked out into the street from various vantage points. The defendant fired at least two more shots across the street at a street light. These shots were fired from the rifle. There were at least 12 pedestrians in the immediate area and there were vehicles travelling along the street, some drivers having to drive around the defendant. Some people feared for their safety and retreated inside the nearby information centre, locked the doors and hid. Police were notified and took the defendant into custody. Dr Michael Jordan, Clinical Director of Forensic Mental Health Services, Tasmania, gave uncontradicted evidence at the trial on behalf of the defendant. He said that after the incident the defendant was admitted to the Wilfred Lopes Centre, the secure mental health hospital. The defendant was ultimately diagnosed with schizophrenia. He was diagnosed with depression in 2008 but his mental health was really quite compromised for months, if not years, before this event. The defendant suffered from paranoid delusions and auditory hallucinations which implied that he was being watched and was under physical threat. He armed himself with a number of firearms and some ammunition. On the particular day he needed to go to the town to acquire provisions, but with a secondary goal that he would attract the attention of the authorities. Dr Jordan related that the defendant had become determined, because of his fear, that he felt he needed support and wanted to try to alert authorities about what was happening to him. He also had developed a fear that a female with whom he had worked many years previously was about to be executed, and he wanted to warn the authorities about that. His paranoid schizophrenia was prominent on the day. In Dr Jordan's opinion, the defendant's ability to reason was affected, and the mental illness deprived him of the ability to understand that the acts of discharging the firearm were ones which he ought not to do. Indeed, to the defendant, it was the right thing to do in order to alert the authorities and resolve the situation which had arisen.

As to the disposition of the matter, I have detailed and comprehensive reports from Dr Jordan dated 20 march 2015, and Dr Evenhuis, a consultant psychiatrist with Forensic Mental Health Services, dated 14 April 2015. Dr Jordan fully details the nature and extent of the illness. He says that the defendant has responded well to treatment and there has been no recurrence of active psychotic symptoms, although the defendant remains convinced that his property is subject to unexplained industrial noise. The defendant has expressed considerable remorse at what he did, and has developed reasonable insight into his condition. His desire to avoid a similar situation occurring in the future is contributing to his adherence to medication and abstinence from cannabis. In Dr Jordan's view there are relatively few risk factors for violent offending that are not due to his recent difficulties with mental health. Dr Evenhuis notes that the defendant's initial good response to treatment at the Wilfred Lopes Centre in 2014 has continued during his treatment in the community for the rest of 2014 and into 2015. It is of significance, of course, that the defendant has been in the community for that length of time and has not re-offended.

I have the Attorney-General's report as to the views of the next-of-kin and of persons said to be the victims of the crime. The defendant is presently living with his mother, and has been since his release from Wilfred Lopes on 12 February 2014. Mrs Nieuwhof reports that he has been very well and settled, and that he has been co-operative and conscientious in relation to taking his medication. She expresses confidence that he can continue on the positive path that he has

taken to date. Only one of the three people who actually witnessed the firing of the shots wished to make a statement. He expresses concern that the defendant was capable of acting as he did simply by virtue of his mental condition. He says he would feel better if the defendant were not living in Swansea but understands that it might not be achievable or reasonable. His hope is that if the defendant is to live in the community, he can be closely supervised.

I am to apply, where appropriate, the principle that restrictions on the defendant's freedom and personal autonomy should be kept to the minimum, consistent with the safety of the community. The options available to me, in descending level of restriction, are a restriction order, release under a supervision order, a treatment order, conditional release, and unconditional release. Both Drs Jordan and Evenhuis canvassed the options in their reports, and each recommended conditional release. Having regard to the contents of the reports, and taking into account all of the material, I am satisfied that such a course is the appropriate one, and the order I will make is one for conditional release.

[His Honour outlined the proposed conditions and said that they were generally in line with what the Director had recommended in his report. His Honour sought submissions but neither counsel wished to say anything.]

Mr Nieuwhof, the formal order I make is that you are released on the condition that for a period of 3 years you be subject to the supervision of the Clinical Director of the Community Forensic Mental Health Service or delegate, and that you:

- 1 comply with the directions of the Director or delegate as to medical, psychiatric or psychological treatment, or treatment for alcohol or drug dependency;
- 2 that you submit to drug testing, if reasonably required to do so by the Director or delegate;
- 3 that you provide to the Director or delegate contact details as and when requested, and not change your place of residence without informing the Director or delegate beforehand.