

**STATE OF TASMANIA v BNA
COMMENTS ON PASSING SENTENCE**

**13 JUNE 2024
ESTCOURT J**

The defendant is BNA, who was born on 25 June 2007 and is now 16. The complainant is SK, who was born on [date redacted].

On 1 April 2024, she was working in the Anaconda Store in Glenorchy when at about 2pm on that day the defendant came into the store, with a small pocket knife and said he was going "to do a robbery". Upon entering, he yelled at the complainant to give him money and pointed the pocket knife at her. She told him there was no money and she backed away. The defendant went to the cash register and attempted to force it open. He could not open it. He tried another one in a similar manner, with the same result, and then ran towards the rear of the store where he grabbed a Fluid branded bicycle, valued at about \$1,000, and rode that bicycle to the exit of the store. He was seen leaving the store on the bicycle, heading towards the Brooker Highway. He was subsequently arrested. The bicycle and pocket knife have not been located.

A compensation order is sought in favour of the Spotlight Retail Group in an amount to be assessed and I make that Order and adjourn the assessment sine die.

There were a number of members of the public present inside and outside of the store during the incident, which is what makes it troubling because people are highly upset by these events. The offence, I am told, was committed whilst BNA was actively under the influence of methyl amphetamine.

BNA has been in custody since his arrest on 1 April 2024, which makes it 74 days that he has spent in custody, and that time has not been allocated to any sentence. He is also in custody in relation to summary matters, which are listed for facts and sentence on 2 July 2024.

BNA has been sentenced in the Youth Justice Court on three occasions: November 2022, November 2023 and December 2023, but he has not previously been subject to a sentencing order involving detention. However, BNA spent the majority of 2023 in custody from 11 February to 7 December 2023. He was refused bail and remained in custody for an extended period, largely on the basis that he was charged with offence of aggravated armed robbery on 6 September 2022 and then aggravated armed robbery and attempted murder on 10 February

2023. The incidents giving rise to these alleged offences both involved BNA being in the company of others. He was remanded in custody with those people from 10 February 2023 onwards.

The charge from 6 September 2022 ultimately proceeded as a charge of stealing and two counts of common assault. The charges from 10 February 2023 did not ultimately proceed against BNA in any form, so this extended period in custody at Ashley Youth Detention Centre was very difficult for him and had an adverse impact on his development and the prospects of rehabilitation. He describes being in lock downs regularly in detention, where residents spent as little as one hour per day outside their cells, and describes that at one stage this continued for close to two months on end.

In late 2021 BNA was the victim of an aggravated assault when he and others were shot at with a firearm, in public, in Glenorchy. He describes being traumatised by this incident saying he did not know the person who shot him so now fears that anyone in public could have a firearm or be a threat to him and he is hypervigilant regarding any perceived threats. BNA was due to give evidence on that matter on 12 June 2024 and the need to give evidence has caused him ongoing stress and caused him to relive and ruminate on the incident.

Following this incident he began spending more time with the others I have referred to and in mid-2022 he was told by his stepfather not to come home. He then did not have a stable address, was not receiving any Centrelink benefits and had no contact with or support from his mother, stepfather, biological father or any other family.

BNA's offending began in this context in late 2021. He was fending for himself, disengaged from education, was using cannabis and spending all the time with his peers engaged in similar offending. The only adults in his life were also offending.

I take into account the period BNA has spent in custody on remand. He is remorseful and his early plea of guilty is consistent with remorse. In his pre-sentence interview he appropriately reflected on the impact of his offending on the victims, including fear, surprise, time off work and impact on their families.

It has been recommended by Youth Justice that I consider a disposition pursuant to s 47(2)(a) of the *Youth Justice Act* (1997), namely a Suspended Detention Order. This recommendation takes into account the offences that led to BNA's current Probation and Community Service Orders and the seriousness of the current offence.

I see no reason not to accept that recommendation and accordingly I impose a period of four months' detention from today, which period of detention I wholly suspend for a period of 12 months on the conditions set out in s 90(3) of the *Youth Justice Act*. I record a conviction,