

STATE OF TASMANIA v KJS
COMMENTS ON PASSING SENTENCE

1 AUGUST 2024
ESTCOURT J

KJS was 16 years old at the time he committed the crimes of attempted aggravated armed robbery and aggravated armed robbery to which he has pleaded guilty.

On 12 November 2023, KJS and his co-accused planned to commit an armed robbery of the American Convenience Store located at 120 Liverpool Street, Hobart. Four of them entered the shop, KJS entered first, he had a glass bottle with which he threatened the store attendant, and demanded cash and cigarettes. The store attendant told the group to leave the store and refused to give them. As the group left, KJS threw the glass bottle at the store attendant and it struck him to the side of the face. This constitutes the charge of attempted aggravated armed robbery on complaint 10819/2023.

Approximately 20 minutes later, at about 11:40pm, the four again entered the store. This time KJS was armed with a large kitchen knife, another with a spanner, another with a ball peen hammer and the last with a metal rod. KJS moved behind the counter and threatened the store attendant with the knife. He demanded that the store attendant give him cash and cigarettes. He thrust the knife towards the store attendant and another accused hit the store attendant over the counter with the metal rod twice to the upper body/arm area. The four were shouting threats at the store attendant, saying that they were going to kill him, hurt him and damage him.

The store attendant removed cash and cigarettes and handed them over. He gave them approximately \$600 in cash and 15-20 packets of cigarettes. The four then began to leave the store. As they were leaving, one of them smashed the point of sale machine with the hammer he was holding, destroying it. This constitutes the charge of aggravated armed robbery on complaint 10819/2023.

KJS spent 22 days in custody after his arrest.

A compensation order is sought and made, pursuant to s 98 of the *Youth Justice Act* in favour of the proprietors of the American Convenience Store, in an amount to be assessed.

Pursuant to s 11(1)(a) of *Crime (Confiscation of Profit)s Act* I make a forfeiture order in respect of item numbers 1, 6, 7, 11, 12, 13, 15, 20, 23, 24 and 25 on Property Receipt 727861.

KJS has had a number of relevant court appearances in the past, including a number of stealing matters and a conviction for attempted robbery and armed robbery for which he was sentenced in this Court by Blow CJ on 4 December 2023.

These are very serious crimes which were planned and executed against vulnerable business premises. If committed by an adult they would likely attract a prison sentence of between two to five years.

KJS has diagnoses of Autism Spectrum Disorder, ADHD, Anxiety and an intellectual disability, and has significant funding under the NDIS. He was unfortunately exposed to and was the victim of significant violence in his home as a child.

I have an extremely thorough and favourable pre-sentence report from Youth Justice in which the author notes:

"KJS's life circumstances have changed considerably during 2024. He is now the subject of a Child Safety Service Care and Protection Order until he is 18 years old that underpins a kinship care agreement which runs alongside a National Disability Insurance Scheme (NDIS) package. His carers provide a supportive family environment where a consistent structured day facilitates pro-social discussions and daily chores that influence independence. KJS attends regular medical appointments and is prescribed specific medications for his diagnosed conditions. He attends Elizabeth College three times a week in a Grade 11 part time program, engages with a disability service mentor twice weekly and has expressed motivation to increase the time he spends with his youth justice community service order youth worker. Added to this are other potential programs that KJS's carers are seeking to involve him in.

KJS demonstrates his understanding of the link between peers, drug use, and offending. He has expanded his comprehension of the way his perceptions influence his decision making, and lead to the behaviours that guide his actions. KJS has been able to detail these factors when discussing his experiences within both offending and pro-social contexts. This comprehension is due in large part to the daily discussions he contributes to within his current kinship care placement. KJS was also able to demonstrate healthy victim empathy when discussing the offences related to this report."

KJS's counsel reiterates that KJS's living circumstances have significantly stabilised over the last six months. He feels cared for, supervised and guided by his foster family, particularly [name suppressed]. He greatly appreciates the security and support provided by his foster parents and he respects and abides by their rules. He now feels part of a family and this renewed sense of belonging and having consistent support has been central to a positive change in his mindset. He cites not wanting to let his foster parents down as a primary motivative factor to rehabilitate.

KJS's foster parents are actively involved in supporting him through his legal matters and supporting and monitoring his engagement with a range of supports, including Youth Justice. They provide pro-social modelling and a positive family environment that KJS lacked in his childhood. KJS has chores and responsibilities at home that he fulfills. He acts as a big brother to his younger foster sister. [Name suppressed] summarised in the pre-sentence report that "This is the first time he actually feels like he has been part of a family. He has had such chaos in his life" and "it really has been amazing to see how the structure of having a mother and a father in a family can change somebody".

KJS, together with [name suppressed], have set goals for him to achieve over the next twelve months. The first, abstinence from drugs, he has already achieved. He has also obtained a Learner's driver's licence and [name suppressed] supervises him driving. Longer goals include employment and applying to play state representative basketball.

Since being bailed in December, KJS has been subject to and complied with strict bail conditions that he has been entirely compliant with. One condition was not to associate with any of the co-accused. He recognises that throughout 2023 he was not spending his time productively and was mostly spending time with negative influences, including his cousins, leading to offending. [Name suppressed] conducts random checks of his social media accounts to ensure he is not in contact with such people and KJS agrees to this. He has not re-offended.

The author of the pre-sentence report states that while acknowledging that KJS's protective factors have considerably improved over the past six months, the offences related to this report are of an extremely serious nature, which Youth Justice believe needs to be matched by a serious, lasting consequence. It is respectfully recommended in the report that I should consider a disposition pursuant to s 47(2)(a) of the *Youth Justice Act* (1997), namely a Suspended Detention Order. Although KJS's counsel suggests that a further period of probation would be an appropriate sentence, I see no reason to depart from the Youth Justice recommendation.

KJS is convicted of both crimes and, taking into account the 22 days already spent in custody I impose a single sentence of eight months detention, which sentence I wholly suspend for a period of 12 months on condition that KJS commits no offence within that period which, if committed by an adult, would be punishable by imprisonment.