

STATE OF TASMANIA v DANIEL ASHLEY WHEATLEY
COMMENTS ON PASSING SENTENCE

11 JUNE 2024
WOOD J

The defendant, Daniel Ashley Wheatley, has pleaded guilty to burglary and stealing a firearm or firearm part.

The complainant was, at the time of the burglary, a registered firearms dealer and lived at Granton. He had a large shed on the property containing several large safes where he securely stored firearms and ammunition. The shed was kept locked overnight. During the night of Friday 30 July 2021, the defendant and his co-accused, Zane Christopher Benson, entered the shed by forcing open a heavy-duty screen door and solid door. They then forced open five safes and stole 12 firearms, namely:

- Fieldman Naughton .22 Rifle
- OMARK 44 .308W Rifle
- Weatherby 0308NM Rifle
- Weatherby .308 Rifle
- Franchi 12 gauge Shotgun
- Hollis 12 gauge Shotgun
- Sako 75 22/250 Rifle
- Ruger Security .357 Revolver
- CZ-UB 9mm Handgun
- Smith & Wesson .22 Pistol
- Hi Standard Semi-Automatic Pistol
- BSA Sportmans Model 15 Rifle.

The approximate total value of the stolen firearms is \$14,500.

They also stole a quantity of assorted ammunition. The theft of all firearms and the risk of circulation within the community is always a matter of significant concern, but particularly so the Ruger Security .357 Revolver, CZ-UB 9mm Handgun, Smith & Wesson .22 Pistol, and the Hi Standard Semi-Automatic Pistol as they are under 30 cm in length and are more easily concealed and may go undetected by police and the public.

The following morning, the complainant discovered the theft of the firearms and reported the matter to Tasmania Police.

A forensic examination of one of the safes returned a high-grade DNA match to the defendant and another returned a positive match to his co-accused.

On 27 April 2022, the defendant voluntarily attended the Bellerive Police Station after a police search but did not make admissions. He was then arrested.

One of the firearms was recovered when a member of the public located it in the roof cavity of his house. None of the other firearms have been recovered.

The defendant has an extensive record of convictions for offences of dishonesty, including 12 for aggravated burglary as an adult, two of which were committed after this offending, and 15 for burglary, three of which were committed after this offending. He is presently serving cumulative sentences of imprisonment of 145 days and three months' imprisonment, and was eligible for parole on 7 June 2024.

Time in custody on this offending has already been attributed to other sentences that have been imposed by the courts and has been taken into account.

The defendant is aged 31 years. He has had a long-standing drug problem and at the time of committing these crimes, he was in the grip of an ice addiction. He was imposed upon by his co-offender and others to participate but given very little information about the crimes that were to be committed. He did not know what was to be stolen or that firearms were intended to be taken. Another or others planned the crime, took the firearms away with them, and any profit, if it was made, was not made by the defendant.

[... paragraph redacted...]

I have been provided with a report from clinical psychologist, Karla Milner, dated 12 December 2023 which provides information about the defendant's mental health. He has been diagnosed with multiple conditions, namely complex post-traumatic anxiety disorder, major depressive disorder, generalised anxiety disorder, substance use disorder, and a traumatic brain injury.

His symptoms are extensive and include extreme anxiety, avoidance of social situations, panic attacks, hypervigilance, low mood, and obsessive behaviours. These conditions significantly affect his daily functioning. The report from Ms Milner explains:

Daniel stated he lives with his partner and relies on her for emotional and practical support. He requires her support with activities of daily living (including self-care), constant prompting, and with support attending appointments (due to anxiety, lack of confidence, poor comprehension, and memory).

[...parts redacted] he is presently in custody and unfortunately does not have access to therapeutic services. On his release, he will receive treatment funded by the National Disability Insurance Scheme. He has the support of his partner and work available to him.

I am satisfied that this is a case for particular weight to be given to the defendant's circumstances. General deterrence is still of importance but not as much as usual for crimes of this nature.

Mr Wheatley's lesser role in the commission of the crime, with no part in its planning and profits, distinguishes him from the usual offender involved in burglary and theft of firearms. His mental health conditions are debilitating, and he is vulnerable to addiction. The assistance he is providing is significant and warrants a discount, which I shall specify. Rehabilitation is of primary importance in this case. If he can successfully address his drug addiction long-term, the community will benefit. Community Corrections have provided a report recommending

supervision in order that Mr Wheatley engages in drug and alcohol treatment and support, and to ensure a robust relapse prevention plan.

Mr Wheatley, I record a conviction and I impose 12 months' imprisonment wholly suspended on condition that you must not commit any offences that could attract a term of imprisonment for a period of two years from the date of your release.

A condition of the suspended sentence is that you must complete community service of 98 hours within the period of two years.

Another condition of the suspended sentence is that you must, during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer.

There are conditions that relate to supervision by a probation officer. You must comply with the reasonable and lawful conditions of your probation officer, you must notify your probation officer of any change of your residential address or employment before, or within two working days of the change, and you cannot leave Tasmania without the permission of your probation officer.

Further conditions are that you must, during the operational period of the order, undergo assessment and treatment for drug dependency as directed by a probation officer, and you must, during the operational period of the order, submit to medical, psychological, or psychiatric assessment or treatment as directed by a probation officer.

I also impose a condition that you must report to Community Corrections at 75 Liverpool Street in Hobart within two working days of your release.

If not for the assistance I have mentioned, I would have imposed 12 months' imprisonment with 7 months suspended on conditions for two years, rather than the whole 12 months suspended on conditions, and you would have to have served five months' imprisonment cumulatively to the current sentence that you are serving.

I make a compensation order in favour of Alan Walter Bennett in an amount to be assessed.