

STATE OF TASMANIA v JYE MAHER and ZACHARY ALTMAN 4 DECEMBER 2024
COMMENTS ON PASSING SENTENCE **PEARCE J**

Jye Maher and Zachary Altman, you both plead guilty to aggravated armed robbery. At about 4.25 pm on 9 November 2022 you went to the home of Nakul Rathod in Sandy Bay. It had been arranged, through a Facebook account in a false name, to meet Mr Rathod to inspect an iPhone he had advertised for sale on Marketplace. You were both driven there by two associates who parked a short distance away. Your plan was to rob Mr Rathod of the phone and you took weapons. He arrived home in company with his housemate Paras Sharma. Mr Maher, after a short discussion with Mr Rathod about the phone, you snatched it from him and put it in your pocket. You produced a hatchet with a wooden handle, and you, Mr Altman, produced a short crowbar. You intended to leave and threatened violence if they followed you. It was a threat you then carried out. When Mr Rathod grabbed you, Mr Altman, you began striking him with the crowbar to his back. You also struck his head but he is not sure whether that was with the weapon. Mr Rathod then struck out at you, Mr Maher. However the phone was knocked away. When you Mr Maher, tried to pick it up you were grabbed by Mr Sharma. You pushed him to the ground and then struck the top of his head with the hatchet, causing a wound. Mr Sharma believes he may briefly have lost consciousness. You then struck Mr Rathod to his back with the hatchet. When your associates from the car approached, Mr Sharma called for help, but he was punched once to the side of his head by one of those males. You all then left. Mr Altman, you took the phone which was offered for sale on Marketplace the next day. You were both identified as the offenders from a range of evidence including fingerprints, DNA, CCTV footage and a photoboard identification procedure.

The police and an ambulance soon arrived. Mr Rathod suffered a bump on his head and cuts and bruises to his arms and right leg. Mr Sharma had a three centimetre laceration to the top of his head which was closed with glue. I was not told of any wound to his back.

Mr Altman, you presented yourself to the police station six days later on 15 November. You admitted that you were there to help steal a phone but otherwise told a series of lies attempting to downplay your involvement, including that you were forced to be there under threat of violence.

Mr Maher, you were 18 when this crime was committed. You are now aged 20. Your personal circumstances were outlined by your counsel and in a pre-sentence report. You came from an unstable family situation involving drug use and violence. Your relationship with your parents was turbulent but you now are supported by your mother and other female relatives. There is support available for you in the aboriginal community. You persevered with school until grade 11 despite some problems and you have satisfactory reading and writing skills. You have had some employment but it has been very limited. You received Centrelink benefits until going into custody and you have already accumulated fines and penalties which are almost \$3,000. Use of illicit drugs has been a significant factor in your life. You have been using cannabis and methylamphetamine since you were about 15. For a young man you already have a significant record of offending for dishonesty and anti-social behaviour which seems to largely coincide with the beginning of your drug use. Your record also includes some violence, most significantly a wounding committed while you were a youth for which you were sentenced on 24 May 2022 to 100 hours of community service. Despite that you kept committing offences including breaches of bail, sold cannabis, drove with a drug in your oral fluid and on 20 October 2022 you were found with a shortened firearm. Leading up to this crime in November 2022 you were a heavy user of methylamphetamine. You had two appointments with a drug counsellor before

then but showed little interest in change. You were affected by the drug at the time. Even after you were arrested you kept committing offences. They are not prior convictions but are relevant to the chances that you will reform. On 13 June 2024 you were made subject to a suspended sentence and a two year community correction order but your compliance was very poor. You reported to the author of the pre-sentence report that it is only since you have been abstinent from drugs after being taken into custody on 6 September 2024 that you have noticed any improvement in your mental and emotional wellbeing.

Although you were the younger of the two participants you were heavily involved in the planning and execution of the crimes. You were responsible for infliction of much of the violence and caused the wound to Mr Sharma's head. It is in your favour that you pleaded guilty but it was not an early plea and was not entered until the matter had been prepared for trial.

Mr Altman, you were 20 at the time and you are now almost 22. Violence was common in your household when you were growing up. Your parents separated early and in 2015 you were placed into the care of your grandparents who remain very involved in your welfare. You moved to Hobart with them in 2019. Despite these disadvantages, at the time of this crime, you had no prior convictions and you have not, as far as I have been made aware, been in trouble since.

I also have a pre-sentence report about you and I was given two helpful reports from a clinical psychologist, Dr Grant Blake. Dr Blake was not your treating psychologist and his report was prepared for the purposes of these proceedings. Dr Blake recently assessed you during an interview in the presence of your grandfather. He also had some other collateral materials including a report prepared in 2021 by your treating clinical psychologist Dr Frankel. Dr Blake diagnosed ADHD, mild to moderate autism without intellectual disability, borderline personality disorder and an undetermined learning disorder. He also assessed you as meeting the diagnostic criteria for complex PTSD. Dr Blake was asked to consider the effect that any mental impairment may have on sentencing. He did so in accordance with the principles in *Verdins*. Dr Blake was not given details of your crime but he correctly inferred from your own description of what happened that it was extremely serious conduct. You initially told Dr Blake that your participation in this crime resulted in part from duress, that is, that you were forced or pressured by others to be involved. That claim was later withdrawn which led to Dr Blake's second report. Dr Blake was also given limited information about the more recent grant of bail following your initial remand in custody. The decision to grant bail was mine and was made on the basis of the information I was given at the time. That information concerned the effect imprisonment had on you. I was also informed that the prison had difficulty managing the risk you posed to yourself. That information is now to be considered in light of the contents of Dr Blake's reports. As to your moral culpability for the crime, that is whether any circumstance or characteristic applied to you which may have an impact on your blameworthiness, all he could say was that the combination of your conditions predispose you to negative relationships and reduce your capacity for better interpersonal functioning. In my view that is not such, in this case, as to reduce your blameworthiness. I accept Dr Blake's opinion that the nature of your conditions is such as to impact on the type of sentence you should serve or the conditions in which it is served. I also am satisfied that prison may result in an adverse effect on your mental health. Although Dr Blake found that issue difficult to consider he suggested that prison will have that effect. He recommended mandated treatment and management of your significant mental health concerns. I may make provision for your treatment in the community through supervision as part of a sentencing order. In the event of a custodial sentence Dr Blake recommends accessing prison records of risk concerns. I have no power to order access to any such records and I have not been asked to do so. I have been provided however with a custodial management report of your period

in custody in September. There was some self-harm and many complaints about your perceived risks to your safety. Dr Blake predicts more attempts at, or threats of, self-harm, especially at and following the time of sentence. However there is nothing in the material I have been given which leads me to conclude that the risk that you pose to yourself, or the risk posed to you by others, while in prison may not be appropriately managed. Because of your conditions prison may be more difficult for and will weigh more heavily on you than others without your conditions and may adversely affect your mental health. According to Dr Blake you are emotionally vulnerable and you are prone to a very high level of catastrophising and need for a sense of safety. The risk of adverse effects on your mental health are to be assessed against that catastrophising response style. Your recent remand was your first experience in custody. I take that into account. As to specific deterrence, you continue to minimise your involvement in this crime and have expressed no remorse. I don't see that the need for general or specific deterrence is minimised at all.

It is relevant to sentence that you were also a user of illicit drugs. You used cannabis at age 15 and began using methylamphetamine at age 18. At the time of this crime you were a habitual user. That is not mitigating. According to Dr Blake you were, to use his words, treatment avoidant in respect to your mental health conditions but yet you resorted to use of illicit drugs.

You also pleaded guilty but at a late stage. You are criminally responsible for all of the conduct committed in the course of this crime. Whether it was committed by you or others. I would sentence you on the basis however that you were not directly responsible for the most serious violence and there should be some marginal moderation of sentence as a result of the mental impairments. Because of those factors, most particularly the latter, and because of your lack of prior convictions there will be some difference between the two sentences.

The factors which apply to sentencing young adults apply to both of you. When this crime was committed you were likely immature, more prone to ill-considered or rash decisions and lacking in insight and judgment. Perhaps you did not fully appreciate the seriousness and possible consequences of what you planned and what you did. There is more potential for your rehabilitation. You should not be exposed to the corrupting influence of prison unless there is no acceptable alternative. However all of those considerations are of lesser importance for crimes like this. You are both to be sentenced for a very serious crime. You went to Mr Rathod's home with a plan and intention to rob him and prepared for violence using weapons to achieve your aim. You then in fact inflicted serious violence using the weapons. As I have said, each of you is responsible for all of the violence whether it was inflicted by you or not, because it was part of your common purpose. Courts in this State and elsewhere have long emphasised the seriousness of the crime of armed robbery and aggravated armed robbery. They are primarily crimes against the person and can have a profound impact on victims. This case is a good example. Mr Sharma suffered a painful physical injury which took some time to resolve. But quite apart from that physical injury, both he and Mr Rathod suffered the type of significant emotional and psychological damage which is to be expected to result from a crime like this. They suffer from ongoing fear and insecurity, a lack of confidence and a reduced sense of safety. The effects are likely to last for a long time, if not their whole lives. Your offending is of such a nature that punishment, general deterrence, specific deterrence and denunciation of the conduct must take priority over the matters which are personal to you, whether your age or mental impairment, although those factors still carry some weight. For both of you, a significant term of imprisonment, some of which is to be actually served, is the only appropriate sentence.

Jye Maher and Zachary Altman, you are both convicted on the indictment. I make a compensation order in favour of Nakul Rathod in the sum of \$2,000. I may only give you 28 days to pay that sum but you may enter into a repayment arrangement.

Mr Maher, you sentenced to imprisonment for two and a half years from 6 September 2024, the day you went into custody. I suspend one year of that term for eighteen months from your release. I order that you not be eligible for parole until you have served nine months of that term, which is half of the operative part of that sentence. The suspended term is subject to the following conditions:

- (a) You are not to commit another offence punishable by imprisonment during the period the order is in force. If you breach that condition you will be required to serve the term unless that is unjust.
- (b) During the operational period of the order, commencing from your release, you will subject to the supervision of a probation officer. The conditions referred to in s 24(5B) of the *Sentencing Act* apply to this condition and will be set out in the order you will be given. These include that you must report to a probation officer at the office of Community Corrections in Hobart within three clear working days of your release, you must submit to supervision and comply with the directions given by your probation officer, you must not leave Tasmania without permission and you must notify of any change of address.
- (c) In addition to the core conditions, the order will also include the following special conditions that you must, during the operational period of the order:
 - i. submit to the supervision of a Community Corrections officer as required by that officer;
 - ii. attend educational and other programs, undergo assessment and treatment for alcohol or drug dependency, submit to testing for alcohol or drug use and submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;
 - iii. attend and complete the EQUIPS addiction program as directed by a probation officer.

Zachary Altman, you sentenced to imprisonment for two years from 14 November 2024, thus taking into account the period of 20 days you spent in custody between 6 and 25 September 2024. I suspend one year of that term for eighteen months from your release. I order that you not be eligible for parole until you have served six months of that term, which is half of the operative part of the sentence. The suspended term is subject to the following conditions:

- (d) You are not to commit another offence punishable by imprisonment during the period the order is in force. If you breach that condition you will be required to serve the suspended part of the term unless that is unjust.
- (e) During the operational period of the order, commencing from your release, you will subject to the supervision of a probation officer. The conditions referred to in s 24(5B) of the *Sentencing Act* apply to this condition and will be set out in the order you will be given. These include that you must report to a probation officer at the office of Community Corrections in Hobart within three clear working days of your release, you must submit to supervision and comply with the directions given by your probation officer, you must not leave Tasmania without permission and you must notify of any change of address.

- iv. In addition to the core conditions, the order will be subject to the same special conditions that I have just announced in respect to Mr Maher. They will be set out in the order you will be given.