

STATE OF TASMANIA v ZACHARIAH ANGUS DENWER-RIPPER

22 December 2016

COMMENTS ON PASSING SENTENCE

WOOD J

Zachariah Angus Denwer-Ripper has pleaded guilty to armed robbery. On Saturday 24 October 2015 he entered a corner store in West Hobart. The store, known as West Hobart Express, is a combined grocery store, news agency and post office.

At around midday an employee, Adam Irwin, (18 years of age) was behind the counter. The defendant entered the store wearing a dark, hooded jumper, with the hood pulled over his head and a bandana concealing the lower part of his face. The defendant held a knife towards Mr Irwin, and demanded that Mr Irwin put money into a backpack. The knife was a retractable Stanley knife. Mr Irwin asked whether he was really trying to rob them and the defendant responded saying “look I’m not fucking around here. I will cut you”. His manner and voice was aggressive. A female co-worker stocking shelves approached the situation and the defendant told her he would cut her and to stay back. She told Mr Irwin to hand over the money. Mr Irwin began putting \$50 notes into the backpack and discreetly pressed a duress alarm. The defendant took the backpack containing \$350 and fled on foot into Forbes Avenue. He took off items of clothing such as the jumper and bandana and put them in his backpack, then continued to run to his home in Frederick Street. He was observed by a number of witnesses, one of whom recognised him from school days.

The robbery was committed in business hours at a time when members of the public would be expected to be present. The CCTV footage shows at least one customer entering and then leaving once he realised what was taking place. The scene would have been frightening for customers and terrifying for Mr Irwin and others working there.

Police officers promptly attended the defendant’s residence. The money was recovered and the knife found. He was interviewed and said the money was his own money that he had saved.

The defendant is now 24 years of age; he was 23 at the time he committed the crime. He has some prior convictions for offences, but not for serious crime such as this. Predominantly, his previous offending involves driving offences, possession of drugs and breach of bail. His only dishonesty offences are an offence of burglary and stealing committed in 2011. He received a community service order. He has not been sentenced to a term of actual imprisonment before.

At the time the defendant committed this crime he was heavily addicted to methamphetamine and was under the influence of that insidious drug. The context of that addiction is significant. He had developed mental health difficulties as a teenager. Events in his life had destabilised him and caused him difficulty, particularly the death of his grandparents and the separation of his parents. In his words, his life “went downhill”. There is also a matter that came to light regarding abuse as a child, the perpetrator someone outside the immediate family. The defendant developed panic disorder and attention deficit hyperactivity disorder. Symptoms commenced as a teenager and were serious and debilitating. They include difficulty in impulse control and anger management.

Against this background, he commenced taking drugs; first cannabis and by 17 years of age he was taking methamphetamine. He described that that drug enabled him to feel “normal” and consuming cannabis helped him manage his emotions.

Now his goal is to be abstinent from drugs. He will require significant support in achieving this. He is likely to need personal counselling. He informed his probation officer, Ms Kirsty Mawer, that he is scared of abstinence as it will result in him needing to deal with past trauma. He has said that when he gets off the drugs everything comes back to him; “it is horrible”.

The defendant is a single man who acknowledges loneliness is a problem for him. He has a child from a previous relationship and a close bond with three children of his former partner. Despite constant efforts to see his children, he currently does not have contact with them and describes feeling “broken” about this. He loves being a father. This is another aspect of his life where counselling and support would assist him. I expect that it is a vicious circle, where his grief about his children

exacerbates his vulnerability to drug use, and his drug addiction affects his chances of contact with his children.

I have the benefit of two reports from the defendant's treating psychiatrist, Dr Ian Wilson. He has been treating the defendant since January 2016. The defendant is diagnosed as suffering from severe attention deficit hyperactivity disorder and major depressive disorder. His symptoms include impulsivity, difficulty in focussing, panic and anxiety. He is prescribed an anti-depressant medication, and also medication for his anxiety symptoms and impulsivity. He is described as having a good prognosis particularly if his mental health problems and drug abuse are dealt with and properly managed. It is said that a major factor in his rehabilitation will be the successful completion of a drug and alcohol treatment program. He would benefit from treatment and the reinstatement of medication specifically to treat his ADHD, as outlined in Dr Wilson's recent report of 9 December.

A preliminary mental health assessment conducted by Clinical Psychologist Dr Emma Rouse notes the diagnosis of ADHD and provides that it is likely that the defendant suffers from panic disorder; he is also assessed as hyper-vigilant to perceived threats. It is thought that this may be attributable in part to past traumas. He requires intensive support and appropriate medication.

It is evident from all this report material that a prison environment will be more difficult for him than for most other prisoners.

The extent to which the defendant's mental health is linked to his offending and reduces his moral culpability is not entirely clear. However, I am satisfied, at least, that there is a link and his moral culpability is reduced to a degree which can be regarded as of significance. His ADHD is described as severe and was untreated at the time. When untreated he is prone to impulsive conduct and he does not think clearly. The likelihood is that he was also suffering depression which again, was untreated. He was distressed about his children and not being able to provide financially for them. His drug abuse was a major factor. Of course, it must be acknowledged that he consumed drugs voluntarily and that was a choice that he made. But I do note that his vulnerability to drug addiction was due in part, at least, to his mental health difficulties.

While the defendant's moral culpability was reduced compared to others who commit this crime, that is not to excuse his conduct. Ultimately, he must take responsibility for his actions and decisions he made. A factor which is clearly in his favour is the steps he has taken since to address his mental health difficulties and his preparedness and willingness to engage in drug rehabilitation.

The defendant belongs to a loving and supportive family. His father lives in the north of the State and the defendant has spent several months this year living there in order to try and rid himself of drugs and to distance himself from the negative influence of his peer group. He has spent time working on his father's farm. He recognises that substance abuse is controlling and ruining his life. He has demonstrated a strong desire to turn his life around and he has successfully reduced his consumption of illicit substances. He was seeing his psychiatrist on a weekly basis with evident improvement in his condition.

The defendant has work history with Incat. He has completed part of a certificate III in Engineering Metal Fabrication and has experience in working on the land. His work experience will stand him in good stead in looking for employment. At present, his mental health is an obstacle to employment. He is someone who obtains satisfaction from being productive and who would benefit from being employed.

The defendant has pleaded guilty. He has expressed empathy for the victims of his crime.

The Court is faced with a sentencing task that gives rise to conflicting sentencing objectives. On the one hand, the sentence must reflect the serious nature of his conduct. Armed robbery is a crime that causes alarm in the community and harm to individuals. Some victims of armed robbery do not recover and suffer lasting and debilitating psychological effects. The Court is concerned about the

prevalence of the crime and is well aware that often, as here, it is linked to drug addiction. Heavy sentences are needed to deter other offenders. On the other hand, the defendant is a young man with his life ahead him. He has good prospects of reform and that outcome is in the community's interests. A lengthy period of incarceration, given his psychological difficulties and the exposure to negative and corrupting influences in a prison environment, will undermine those prospects.

Balancing these considerations I impose the following sentence which aims to achieve both general deterrence but also, in light of the defendant's individual circumstances, seeks to promote his rehabilitation. In the circumstances of this case it is just to give more weight to his reform than would usually be the case.

I record a conviction. I impose 24 months' imprisonment to commence on 28 November 2016. Sixteen months of that sentence is suspended for two years from the date of release, subject to strict conditions:

- The defendant is not to commit an offence punishable by imprisonment for a period of two years from the date of his release from prison;
- He is to be subject to the supervision of a probation officer for two years from the date of his release. All the usual conditions apply. He will need to report to a probation officer within one day of his release from prison.
- In addition, the following special conditions will also apply as conditions of the suspended sentence:
 - He must undergo assessment, treatment and counselling for alcohol and drug dependency as directed and complete any recommended drug rehabilitation program including a residential program.
 - He must submit to testing for alcohol or drug use as directed by a probation officer
 - He must submit to medical, psychological or psychiatric assessment and treatment, and counselling (including grief and anger management counselling) as directed by a probation officer.
 - He must comply with all the recommendations of his treating medical practitioners.
 - He must attend educational, vocational and other programs as directed by his probation officer;
- He must pay a victim of crime compensation levy of \$50 within 28 days of his release from prison.