

STATE OF TASMANIA v FBT
COMMENTS ON PASSING SENTENCE

3 FEBRUARY 2025
PORTER AJ

FBT, the defendant, has pleaded guilty to one count of armed robbery committed on 25 May 2024 when he was a youth aged 17. At a little before midnight on that day, the defendant went into a service station located on the Brooker Highway in Lutana. The attendant was Akhil Chawla aged 24. When he went into the service station, the defendant was wearing a black face covering. He walked to the front of the counter and went through a door which led to the staff area behind. He went towards Mr Chawla and brandished a bladed weapon, with about 2.5cms of a blade protruding from his closed fist. He demanded Mr Chawla give him money from the till. Mr Chawla told him he was not able to access the till. The defendant then threatened to stab him if he did not give him money. Mr Chawla repeated that he was not able to get access to the till. The defendant then took a box containing 50 Bic lighters valued at about \$150 which was located on shelving underneath the register. He also took the store's mobile phone and left. Police attended, were not able to find the perpetrator, but the stolen phone was found nearby. Fingerprinting of the phone was not conclusive but provided some assistance and the defendant was arrested on the afternoon of the next day. He was found in possession of two of the lighters and a beanie with two eye holes cut out of it. When interviewed he said that he had taken drugs that weekend and did not remember going to the service station. He made no admissions.

The defendant is now 18 years and two months old. His recorded history of offending starts in January 2023. Primarily, on 23 May 2024, he was dealt with as a youth for a considerable number of offences including 12 charges of stealing and four of damage to property, assaulting police, resisting arrest, disorderly conduct and escape. He was released and the proceedings were adjourned on conditions, including that he be the subject of supervision by Youth Justice worker for a period of 12 months. As is immediately clear, this crime was committed two days after having been dealt with by the court. He was initially bailed on this matter but failed to appear when required about ten days later, with a warrant being issued for his arrest. After the execution of that warrant he was in custody for about a month before again being bailed, but he again failed to appear and another warrant was issued. That saw him arrested and remanded in custody where he has been since 12 November 2024. The total period in custody to date is 126 days, or a bit over 4 months.

I have a copy of a report of Dr Gray of Forensic Mental Health Services which was prepared for the appearance before the magistrate in May 2024 and I have a later Youth Justice report dated 29 January 2025. I have also heard from counsel. It appears the defendant was born in Russia and remained there with his biological family until he was about 18 months old, when he went into an orphanage. He was then adopted at the age of three years. He lived with his adopted family in Germany until he was nine, when the family moved to Tasmania. His adoptive mother is German, his adoptive father is Australian. It is abundantly clear that the defendant has significant mental health problems with major behavioural issues. It is reported that he left school for the first time in year nine when he became homeless, he then re-enrolled and attended some year 11 classes but was apparently expelled because of the possession of a knife. He finally left home at 15 after an argument with his mother. He was somewhat nomadic living in youth shelters but had some casual work and lived with a girlfriend for a time before being taken into custody. They had a three month old daughter. He no longer has contact with the mother or child after being told to leave the home due to his methamphetamine use. He has a multi substance abuse problem which started in early adolescence. Dr Gray says the defendant experienced trauma and dislocation from a very early age in his life. He has been diagnosed with neurodevelopmental conditions that are likely multifactorial in origin, with roots and

suspected exposure to alcohol in utero and possible genetic components. His behaviours were likely influenced by his trauma and dislocation. He has in fact been diagnosed with likely foetal alcohol spectrum disorder and Dr Gray says that there are features which support this hypothesis. The defendant's neurocognitive function is further impacted by ADHD and borderline intellectual impairment. He has experienced periods of drug induced psychosis although the symptoms appear to resolve when he is abstinent. It does not appear that he meets the criteria for any chronic psychotic illness such as schizophrenia; however, the opinion is he would benefit from ongoing mental health support and treatment as the early stage of a chronic illness cannot be excluded. I note that he had been the subject of an involuntary assessment admission at the hospital in late 2023 following a psychotic episode and was released on 23 December 2023 to no stable address. His homelessness and lack of support serve to explain his failures to appear. Given the complexity of the defendant's disability and further compounding of his limited functioning by trauma throughout his life, Dr Gray recommends an application for support through the NDIS and that it be made with some urgency. Stable accommodation is the priority. He was homeless and transient at the time of this offending. I am told that he has found his time in detention stressful and isolating and of course his first period of detention following his first arrest was his first experience of incarceration.

Of course, armed robbery of this type is a serious crime. In this present factual context I note that retail staff are often in vulnerable situations, particularly working late at night, and they require the protection of the law. I note that Mr Chawla did not sustain any physical injury but no doubt the incident was traumatic for him and experience shows that many people take time to recover from such encounters. The application of the principles of youth justice is moderated, the more serious the offending. In this case, the Court is not just dealing with a youth, but a youth with significant mental health issues. I take into account the plea of guilty. That has avoided the need for a trial. I also take into account the period he has spent in custody. As to the reason for the offending, it seems that the motive was simply to obtain money, essentially for survival, in terms of food and somewhere to stay. The Youth Justice report suggests the defendant would benefit from supervision with an aim towards establishing some sort of stability. He is assessed as unsuitable to perform Community Service. In the circumstances, I will deal with the defendant as a youth and not as an adult.

Mr BT, you have told the Youth Justice worker that your actions were selfish, and what you did was not right and not worth it, and that you would not do it again. It is in your favour that you seem to understand the seriousness of what you did. I hope you understand that this sort of crime is, indeed, a serious matter. Hopefully, you will co-operate with Youth Justice officers in trying to find you stable accommodation and to help you with your problems. I think it necessary to record a conviction. I make a probation order under the *Youth Justice Act*. That will be for a period of 18 months. There are some conditions, which you will have to comply with, and they will be put in writing for you. I make a further special condition that you attend educational, personal, health and other programmes as directed by the assigned Youth Justice worker, and you must undergo medical, psychiatric, psychological, and drug counselling and treatment as directed by the assigned Youth Justice worker. I have to direct that you report to a Youth Justice officer within two clear working days of today so that the direction is that you report to a Youth Justice officer at the Inga Building, St Johns Park, New Town by this Thursday, 6 February 2025. Lastly, I make a compensation order in favour of the "United Service Station, Lutana" in the sum of \$450.