

James Ernest Davey has been found guilty of one count of aggravated armed robbery. The defendant and his co-offender, Tye Silver, committed this crime late at night. On 1 or 2 December 2014 they went to the residence of Aaron Hill in Queen Street, Sandy Bay. He lived in a block of flats and at the time had a friend, Damien Tyrrell, staying. The defendant knocked at the door, and Mr Hill opened the door as the defendant was someone he recognised. The defendant produced a spear gun and demanded “where’s all the money at?” Mr Silver stepped into view and the two men barged into the flat. In a confined lounge-kitchen area the defendant pointed the spear gun at Mr Hill and Mr Tyrrell while Mr Silver gathered up items of property. He took two gaming laptops, speakers, a microphone and an iphone. In response to a demand for money and phones, Mr Tyrrell handed over money from his wallet, amounting to approximately \$250, and his mobile phone. The defendant was in close proximity, pointing the spear gun at Mr Hill and Mr Tyrrell, at times at their faces. The spear gun was loaded. Mr Hill described in his evidence feeling “terrified...frozen with fear basically”. The defendant asked Mr Hill where his phone was and followed him into his bedroom, still holding the spear gun, while he retrieved it. As they left the flat, one of the two offenders threatened Mr Hill and Mr Tyrrell saying if they called the police, they would be dead by morning.

The crime was investigated by police. Initially the complainants were too fearful and intimidated to identify the defendant as one of the thieves. Their victim impact statements reveal that they were very stressed by the incident and have suffered significant adverse effects. Tye Silver was apprehended the following day; the laptops were located in his possession. They are valued at approximately \$2,000 each. The other property and cash has not been recovered.

The police searched the defendant’s residence on 17 December and found two spear guns, one of them consistent in appearance with the spear gun the defendant used in the robbery.

The defendant was 22 years of age at the time of offending, and is now 24. His offending arose out of his heavy addiction to methylamphetamine and his motivation to obtain money for drugs. He has convictions for serious offending, commencing as a youth and all are drug related in some way, either the defendant was driven to obtain money for drugs or he committed crimes under the influence of drugs. Having regard to his criminal offending as an adult, he was convicted of assault contrary to the Criminal Code and aggravated assault in 2011 and was sentenced to 16 months’ imprisonment with five months suspended. He has prior convictions for further offences including driving offences, offences involving possession of drugs, motor vehicle stealing, possess a firearm when not the holder of a firearm licence and breach of bail conditions. At the time he committed this crime he was subject to a probation order and also a partially suspended sentence imposed in January 2014.

He has two recent convictions for trafficking in a controlled substance. On 17 March 2016 he received a sentence of six months’ imprisonment, almost all of which was suspended on condition that he be of good behaviour and submit to the supervision of a probation officer for two years. Recently, on 9 December 2016 he was sentenced with respect to trafficking in MDMA and methylamphetamine dating back to 17 December 2014, arising from the police search with respect to his matter. He was sentenced by Brett J to five months’ imprisonment wholly suspended for 18 months on strict conditions. He was also sentenced on 12 December this year for summary offences including assault police and stealing committed in September 2015 and April 2016 respectively. He was sentenced to 14 weeks’ imprisonment backdated to 6 September. He would have been entitled to remissions and release on 5 December if not for his remand in custody on this matter.

The defendant’s childhood was marred by neglect and abuse. By the age of eight he was placed in Departmental care; there were periods of time living with family members and foster placements. By 13 years of age he was living in an environment that was unsupervised, without basic care and guidance. He was experimenting with drugs and alcohol and was being drawn into criminal activity. He developed an addiction to crystal methamphetamine, known as ‘ice’, in 2014. After committing the crime before the court today, his drug use escalated. He developed mental health problems, and experienced psychotic episodes, resulting in multiple admissions to hospital. He has been diagnosed with schizophrenia. That serious condition subsists, but is controlled by medication. His mental

health problems require on-going intervention and his needs are complex. He was viciously assaulted in March of this year and suffered a head injury resulting in hospitalisation and on-going memory deficits and other difficulties.

The defendant has expressed regret about his offending. He is someone who wants a normal life and a fresh start. He is motivated to address his drug problem and I note he has achieved periods of abstinence in the past. He has undertaken a drug and rehabilitation program known as the “Gottawanna” program. He acknowledges that his rehabilitation would be best achieved through a residential program, preferably a long term program such as Missiondale.

A report by Mr Damien Minehan of 10 March 2016 has been made available to me. It is noted that the defendant requires urgent intervention in relation to his substance abuse, as well as on-going support and treatment for his mental health. Further, the report notes that if his substance abuse continues it is likely to result in permanent psychotic illness and will almost certainly contribute to criminal activity. Mr Minehan’s primary recommendation is for intensive drug and alcohol rehabilitation and support, as well as on-going treatment for his serious mental health symptoms. It is recommended that, in the prison setting, the defendant attend all drug and alcohol programs available to him. In the community he needs to avail himself of an intensive drug rehabilitation program and his status as a client of mental health services should continue indefinitely and his antipsychotic medication must be maintained.

Tye Silver pleaded guilty to aggravated armed robbery and was sentenced to two and a half years’ imprisonment with a non-parole period of 20 months. Submissions have been made regarding the differences in their participation in the crime, their antecedents, and circumstances. I acknowledge that the defendant had a leading role, but they were both primary offenders and both actively engaged as principals. I note the mitigating value of Mr Silver’s plea of guilty. I note that at the time Mr Silver was sentenced, he had been serving a sentence of imprisonment and had been in custody for almost 12 months. There are differences too in their antecedents and ages which largely balance out. There is a particular need in the defendant’s case for an individualised approach because of the seriousness of his mental health condition and the critical importance of drug rehabilitation. However, in sentencing the defendant both general and personal deterrence remain prominent considerations.

In fixing the sentence, I am conscious that no physical violence was inflicted. If it had been the sentence would be heavier. But to invade a person’s home, to rob them and in doing so, to threaten them and stand over them with a loaded spear gun, instilling fear and terror, with the potential for lasting debilitating psychological effect, is to commit a serious crime of violence as well as dishonesty.

I record a conviction. I impose a sentence of two years and six months’ imprisonment. Having regard to time spent in custody attributable to this matter of two months and four days, the sentence is to commence on 17 October 2016. I suspend six months of that sentence for two years on strict conditions:

- He is not to commit an offence punishable by imprisonment for a period of two years from the date of release;
- He will be subject to the supervision of a probation officer during that period; 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 of the probation order will also apply as conditions of the suspended sentence:
 - He must attend educational, vocational and other programs as directed by his probation officer;
 - He must undergo assessment, treatment and counselling for alcohol and drug dependency as directed by his probation officer;

- If directed, he must attend and complete a residential in-patient program, such as Missiondale;
- He must submit to testing for alcohol and drug use as directed by his probation officer;
- He must submit to medical, psychological or psychiatric assessment, or treatment and appointments as directed by his probation officer.

The balance of the sentence of two years' imprisonment is to be served. Having regard to the defendant's age, I allow the minimum non-parole period and make an order that he is not to be eligible to apply for parole until he has served 12 months' imprisonment.

There is a victims of crime compensation levy of \$50 to be paid within 28 days of his release from prison.