

Jayden Dennis Boucher, you have pleaded guilty to charges of aggravated burglary and aggravated armed robbery. At about 8.20pm on 8 October 2021 the complainant and his housemate were at their home in Moonah. The complainant was sitting at a desk downstairs using his phone. He had a second phone, an iPhone, on a charger next to him on the table. His housemate was in her bedroom. You had been at your home with two youths, W and D, and you were drinking; you were intoxicated. You left your house with W and D and attended the complainant's home in possession of a number of tools including spanners. The three of you discussed stealing a television. You all entered the house through an unlocked door and went downstairs where the complainant was sitting. The complainant did not know any of you. One of you took the complainant's iPhone from the table. You all then demanded that he give you the second phone he had in his possession. One or more of you then started to hit the complainant with spanners and other tools you had brought with you. The complainant was hit to the head approximately ten times. At some point during the incident, the complainant hit you to the head with a cup. He told you to leave the house and give him back his phone. The three of you ran upstairs and the complainant followed. D picked up the complainant's mop and threw it at him. The mop connected with the complainant's head. This does not form part of the charges against you. The complainant caught up to W and hit him to the head with the mug. The complainant was able to detain him in the stairwell. Police were called by the complainant's housemate as you and D were fleeing the house. The complainant's iPhone and a pair of his Adidas shoes were stolen. W was arrested at the scene and was interviewed.

Ambulance Tasmania attended the complainant's home that night and transported him to the Royal Hobart Hospital. As a result of the offending, he suffered two wounds to his scalp. The first was a seven-centimetre laceration to his right anterior parietal region which was one centimetre deep, and the second was a four-centimetre vertical laceration to the left posterior parietal region. He required staples on both wounds.

You also attended the Royal Hobart Hospital on the night of the offending. You elected not to be seen that night and re-attended the following morning. You presented with two lacerations to your scalp which were glued. I infer you incurred these injuries when the complainant hit you to the head with a mug or a cup.

On 17 November 2021 at 12.25am, you called the radio dispatch services. You were drunk and advised police that you needed to "*confront*" something. When you were asked what that was, you said "*there was an incident that happened on the 8th October*", explained it was "*a burglary*" and said you were involved. Police attended your address shortly after. You were arrested and taken to the Hobart Police Station.

You participated in an interview the following morning. During that interview, you told police you had been having beers with a few of your mates when you all decided to go for a walk and had "*done a really bad thing*". You stated you were regretting it. You explained you had left the house to go to McDonalds to get food and did not know why you went to the complainant's house. The complainant's residence was a five-minute walk from your house. You told police that you used to know the people that lived there and you thought they still lived there. You said you were intoxicated and did not know what you were doing. You told police that you knocked on the door and no one answered. The others were with you on the landing. You explained you opened the unlocked door, walked in, went downstairs and started speaking to

the complainant. You claimed that you were talking to him about his computer and his gaming setup. You also told police that the complainant seemed shocked to see you. You then told police the complainant "*just changed*" and then hit you to the head. The Crown does not accept this version of events. They say, and you did not dispute during the hearing in this Court, that the complainant hit you to the head after he had been hit by you and your co-offenders. You admitted in the interview you were pretty sure you hit the complainant once, but did not know. You also said you could not remember hitting the complainant at all because you were panicking. You said you did not remember the complainant being hit with the wrench and you did not think that you had a wrench on you. You denied taking any property from the address and said you did not know if anything was taken. You told police you felt so bad about what you had done the next morning that you did not want to look at anyone.

You are to be sentenced on the basis that you were criminally responsible for your own acts and the acts of your co-offenders (excluding D's act of throwing the mop at the complainant's head) on the basis that you and your co-offenders formed a common intention to prosecute an unlawful purpose in conjunction with one another, in this case to enter the complainant's property for the purposes of stealing, and you committed a crime of such a nature that its commission was a probable consequence of the prosecution of such purpose. Given it was the evening, it must have been apparent to you and your co-offenders that someone could have been home at the time you entered the house and that the tools you had in your possession may have been utilised by one or more of you if you were confronted by the persons living there.

The Court has been provided with photographs of the complainant's injuries. I have not been provided with a Victim Impact Statement from the complainant, but I accept, as the Crown submitted, that the complainant and his housemate are likely to have been extremely frightened when confronted in their own home by three complete strangers who were armed and intoxicated. The Crown submits that any sentence imposed should reflect the need to deter you and others from offending in a like manner. The Crown rightly submits that the complainant had a right to feel safe in his home and that this right was violated by your and your co-offenders' conduct.

You were 18 years old at the time of this offending. Your co-offenders were both aged 17. I am told W participated in a community conference pursuant to the *Youth Justice Act* and was required to undertake 20 hours of community service work. D has only recently been charged in relation to this incident and is yet to be dealt with by this Court. At the time of this offending, you had a prior conviction for a high-level drink driving matter. You have no prior convictions for dishonesty offences or offences of violence.

You first appeared in the Magistrates Court in respect of this matter on 12 January 2022. You pleaded not guilty on 19 July 2022 and were committed to this Court for trial. An indictment was filed by the Crown on 6 September 2023. You pleaded guilty to the charges on that indictment on 27 March 2024. A statement of Crown facts was filed on 16 April 2024. You raised a dispute in respect of those facts. The matter was listed for a disputed facts hearing on 7 February 2025, but was not required when the Crown filed a fresh statement of facts which abandoned the disputed matters.

You are now 22 years old. You are in receipt of Centrelink income and have a young child from a previous relationship. You have pleaded guilty to these charges about 6 months after the indictment was filed and over two years after you were first charged. This is not an especially early plea but was one that saved the need for a trial to be conducted in the matter. I

note, however, that it has taken almost a year for the matter to resolve after those pleas were entered. I accept that you are not responsible for that delay. Your counsel submits that by voluntarily contacting police and making admissions during the course of the interview you have provided considerable assistance to authorities. It is also submitted that you demonstrated remorse and insight into your conduct during the course of that interview. You maintain that you did not ever have a spanner in your possession or hit the complainant with one, but accept that you are, with your co-offenders, criminally responsible for that occurring during the course of the aggravated burglary and aggravated armed robbery to which you have pleaded guilty.

It is clear to me that you have had some considerable difficulty with alcohol in the past. Since committing these offences, you have been convicted in March 2023 of a further high-level drink driving offence and reckless driving. This is not a prior conviction. It does, however, indicate that you have had some ongoing issues with alcohol use subsequent to the offending for which you are to be sentenced by me and this is relevant to your prospects of rehabilitation. You were sentenced in that case to a wholly suspended period of imprisonment which was subject to conditions that you perform 22 hours of community service in order to complete the sober driving program and be subject to the supervision of a probation officer for a period of 2 years. I am told that you are now only drink a very moderate amount of alcohol approximately once a month.

Your counsel has provided me a report authored by a forensic psychologist, Dr Georgina O'Donnell. The Crown did not object to the report or make any submissions as to its contents. Dr O'Donnell's examination of your GP records disclosed a lengthy history of chronic and severe anxiety problems. You have experienced many symptoms including expression of suicidal and self-harm ideation when requested to attend school after a period of home schooling in 2019 and grief in response to the death of your grandmother. You have also experienced panic attacks, social anxiety, and agoraphobia. Your mental health treatment has included various combinations of mental health medications since you were a young child. You were home schooled due to agoraphobia in 2008 and 2009 and have had difficulty in engaging with the workforce due to your mental health. You were diagnosed with anxiety and depression in 2008 at age six and more recently diagnosed with attention deficit hyperactivity disorder in 2017. You have been treated by mental health services and paediatric specialists as a child and adolescent from aged four.

Other information available to Dr O'Donnell refers to you as having an early childhood trauma history from exposure to family violence. Dr O'Donnell considers this is a likely causative factor in the development of your mental health symptoms. You also have a strong family history of anxiety and depression. Your mental health presentation has been variously described as post traumatic stress with associated detachment, for example, separation anxiety from your mother which has continued into adulthood. You have also been counselled in the past in relation to the health impacts of smoking and drinking alcohol in excess. Dr O'Donnell's report noted that you presented as extremely anxious during her assessment and you were reliant on the support of your mother and partner. At the time of your assessment you had been experiencing seizure activity. You were not then taking your mental health medication because you claimed it made you feel dizzy and you were waiting to see a psychiatrist for a medication review. It was reported that finance was a barrier to accessing a private psychiatrist to discuss your medication. Dr O'Donnell noted that although the medical records documented numerous referrals for counselling and psychological treatment, it seems that you have not engaged in a meaningful psychological treatment for your severe anxiety and trauma history. You told Dr O'Donnell that you used to see a social worker but have trouble sitting down to talk to people.

In her report, Dr O'Donnell explains that you present with severe chronic anxiety. In her opinion, however, there is no identified causal link between that mental health condition and the commission of the offences. Reduced moral culpability on those grounds is not suggested. Dr O'Donnell, however, is of the opinion that the chronic severe nature of your anxiety symptoms predictably pose a significant challenge to you being able to cope with imprisonment. In her opinion, the nature of your symptoms would mean that a custodial sentence would weigh more heavily on you than a person in normal health, and there is a serious risk of imprisonment having a significant adverse affect on your mental health. Given your adolescent history of suicidal and self-harm ideation under stress, there is a heightened risk of harm to yourself in a custodial environment as a young offender with no prior history of incarceration. Given your known history of exposure to family violence trauma that was a likely causal factor in your development of severe anxiety, Dr O'Donnell also considers that being accommodated in a prison environment amongst a large population of men would be an evident trauma trigger for you which you would find extremely difficult to manage.

In *R v Verdins* (2007) 16 VR 269, the Victorian Court of Appeal identified a number of ways in which impaired mental functioning may be relevant to sentencing. In light of Dr O'Donnell's assessment, the following ways are particularly relevant:

- The condition may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served;
- The existence of the condition at the date of sentencing (or its foreseeable recurrence) may mean that a given sentence will weigh more heavily on the offender than it would on a person in normal health;
- Where there is a serious risk of imprisonment having a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment.

It is important to recognise however that the decision in *Verdins* and other like cases do not stand for the proposition that a term of imprisonment cannot be imposed where an offender subject to such a sentence is likely to experience significant adverse effects. It is, however, a matter that is required to be considered in conjunction with other relevant matters in the fashioning of an appropriate sentence in any given case.

Your counsel submits that the delay in the resolution of your matters has exacerbated the symptoms you experience as a result of your mental health problems. Since Dr O'Donnell's report was authored, you have since been diagnosed with epilepsy which is being successfully treated with medication. You have not yet seen a psychiatrist or engaged in any other counselling or treatment for your mental health conditions. I am told you continue to face financial barriers in accessing such support. Your counsel told me that you were only supervised by Community Corrections for a short period of time for the purposes of the order made in 2023. He suggests this indicates an objective marker of your need for counselling and further assessment. I am told you are otherwise a very different person to the one who committed the offences in 2022.

I requested an assessment from Community Corrections as to your suitability for community-based orders. You have been assessed utilising their screening tool as having medium risk/needs. Community Corrections records indicate decent supervision engagement following the imposition of the Community Correction Order in March 2023 prior to being made unsupervised in July 2023. This information is consistent with what your counsel told me about the level of supervision you received pursuant to your current Community Corrections Order.

You have not yet completed the Sober Driving Program but are scheduled to do so. You have been assessed as unsuitable for the imposition of Community Service due to your reported physical health issues (related to your wrist and knee) and currently untreated mental health concerns. Further, I am told your parental commitments, caring commitments to your grandfather and current unstable housing situation have been identified as barriers to you being able to engage with a Community Service roster. As you do not have a current medical clearance deeming you suitable for Community Service, you cannot be recommended for such an order. You are, however, deemed suitable for an order with a community-based supervision condition. Community Corrections believe you would benefit from a period of supervision with an aim to assist you to obtain gainful employment and engage with necessary mental health services.

In my view, your offending was extremely serious. Entering a home while armed and confronting the occupants in the way that you and your co-offenders did would no doubt have been a terrifying experience for the complainant and his housemate. You and your co-offenders were under the influence of alcohol, which in my view elevates the risk associated with your conduct. Your decision-making capacity was clearly impaired. It was not a particularly well-planned offence, however, you and your co-offenders did take the opportunity to arm yourselves. The complainant was injured during the course of the confrontation. You admitted to personally hitting the complainant at least once. It is not necessary to decide who inflicted the blows that caused the complainant's injuries. You are responsible in any event for all of the blows inflicted (save that involving the mop thrown by D) for the reasons I have already outlined and which I understand from your counsel that you accept. Offending of this type justifiably ordinarily attracts a substantial period of imprisonment.

You were, however, only 18 at the time of your offending. Consequently, factors relating to your rehabilitation and long-term welfare are of particular importance. You have no prior matters of violence or dishonesty. You have pleaded guilty. I accept you have insight into the wrongfulness of your conduct and expressed remorse during your interview with police. Your alcohol use and its relevance to your offending is, however, of considerable concern. I am told you have moderated your alcohol use. There is no suggestion that you have committed any further alcohol related offences in the last two and a half years. I accept that you suffer from severe chronic anxiety and associated issues. This is a long-standing condition. I accept Dr O'Donnell's opinion that your mental health issues would make a period of actual incarceration weightier for you and also have a deleterious affect on your mental health and increase your risk of self-harm. Given the significant and longstanding nature of your mental health issues, it is concerning you have not accessed specialised treatment and counselling in recent years due to your financial situation. I accept this is the case. It is a problem faced by many in the community with limited means, and mental health plans and Medicare funding, while helpful, do not fully cover the associated cost with such treatment. You should, however, give your mental health issues greater priority.

Balancing all of these matters, I am satisfied a sentence falling short of an immediate term of imprisonment is not necessary at this stage. I will, however, impose a significant period of wholly suspended imprisonment with conditions that you be subject to the supervision of a probation officer. I urge Community Corrections to consider directing you to engage with mental health services in the course of supervising you which has been suggested in the report. I would have required you to perform community service if you were suitable. As that option is not available to me, the period of imprisonment is longer than I would have otherwise

ordered. It is important to send a message to you and the community more broadly that the offending you engaged in is serious and warrants significant punishment.

Jayden Dennis Boucher, you are convicted on both counts. You are sentenced to 18 months' imprisonment, wholly suspended for two years from today. It is a condition of that order that while it is in force you do not commit any offence punishable by imprisonment. If you breach that condition then a court must order that you serve the term as well as any additional sentence unless that is unjust. It is a further condition of the order that you are subject to the supervision of a probation order. The following additional conditions are also imposed:

- (a) you must report, on or before 4.00pm on 7 March 2025, to a probation officer at the Glenorchy Office of Community Corrections at 3 Terry Street, Glenorchy;
- (b) you must, during the operational period of the order, report to a probation officer as required by the probation officer;
- (c) you must, during the operational period of the order, comply with the reasonable and lawful directions of a probation officer or supervisor;
- (d) you must not, during the operational period of the order, leave, or remain outside, Tasmania without the permission of a probation officer;
- (e) you must, during the operational period of the order, give notice to a probation officer of any change of address or employment before, or within 2 working days after, the change;
- (f) you must, during the operational period of the order, attend educational and other programs as directed by a probation officer;
- (g) 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 make a compensation order pursuant to s 68(1) of the *Sentencing Act* 1997 in favour of the complainant Jiang Yilin in an amount to be assessed.