

STATE OF TASMANIA v SAMUEL JOSEPH CLARK
COMMENTS ON PASSING SENTENCE

5 DECEMBER 2016
TENNENT J

You have pleaded guilty to one count of stealing a firearm contrary to the *Criminal Code*, s234A. Your counsel applied pursuant to the Code, s385A, for this Court to also deal with one count of aggravated burglary and one count of stealing on complaint number 34658/15. The Crown did not oppose the application and I will in the circumstances deal with all matters together.

On 4 March, 2015, a home at Beechford was broken into. A gun safe in the home was broken into by breaking through a plasterboard wall and cutting through the rear of the safe. Four firearms were stolen to a value of approximately \$3,820.00. A number of other items were also stolen from the house to a value of about \$1,350.00.

Police found a broken pry bar at the home and also scrapes of blue paint on the front gate to the property. A witness told police they had seen a blue Holden sedan with a registration plate bearing the first two letters "EV" driving slowly nearby that day and a second witness recalled what appeared to be the same vehicle driving around other parts of Beechford the same day.

The next day, police intercepted a blue Holden sedan with a registration plate EV 0648. You were a passenger. The car was searched and police found a home made pistol, a shortened shotgun and a forked tip from a broken pry bar. You were arrested and interviewed but made no comment. You were re-interviewed the next day. At that point, you told police you knew the home owner, and that he had guns. You told associates whom you did not name about the guns. You drove the blue car while your associates broke into the home. You then drove them back to Launceston with the stolen property. None of that stolen property has been recovered.

You are 32 years old. You have no relevant prior matters for dishonesty. You are a disability support pensioner as a result of mental health issues and live with your parents. After leaving school you trained as a carpenter and worked consistently. About 2 years ago you witnessed a shooting and helped the victim to hospital. You have since been involved as a witness and have been the subject of threats and intimidation by both the victim and the assailant. You have been diagnosed with Post Traumatic Stress Disorder and received treatment. Your involvement in that incident led you into using methylamphetamine.

On the day of the crimes you now appear for you had no intention to commit any crimes and no knowledge any would be committed. You were collected by a co-offender and as you drove past the Beechford home you mentioned the guns. You had knowledge of their existence because of a connection with their owner through a gun club. Your co-offenders showed interest. You realise now you should have walked away because you knew the others planned to enter the house. You did not but drove the car and helped the others get away. You received no benefit and have no idea what happened to the stolen property.

You have now managed to be drug free for the last six months and want to go back to work. You made admissions to police and pleaded guilty to the charges. As a result of your involvement in this matter you have lost your firearm's licence and will be unable to get another. Your involvement on a recreational basis with guns was an important part of your life.

I obtained a pre-sentence report principally because I was concerned that as a result of possible mental health issues and your level of involvement in this matter your background needed to be looked into and it was also a matter as far as I was concerned that might be one that could be dealt with without an immediate custodial order. Having read the pre-sentence report and just clarified the couple of matters that have been raised by your counsel this morning, I am of the view still that an immediate custodial sentence is not warranted given your involvement in this matter.

In all the circumstances, the orders of the Court are that:

1. You are convicted of one count of one count of stealing a firearm contrary to the *Criminal Code*, s234A, one count of aggravated burglary contrary to s245(a)(iii) and one count of stealing contrary to s234.
2. You are to serve a period of eight months' imprisonment. The execution of the whole of that sentence is suspended on condition that:
 - a. You be of good behaviour and not commit any offence punishable by imprisonment for a period of three years;
 - b. You be subject to a period of probation for 12 months and comply with all reasonable directions of your supervising probation officer during that period; and
 - c. You perform 150 hours of community service.
3. Pursuant to the *Sentencing Act*, s68, you are to pay compensation to Nathan Robert Ferguson in such sum as may be assessed with the assessment of the amount to be adjourned to a date to be fixed.
4. You are to pay a victim of crime compensation levy of \$90 within 28 days.