

STATE OF TASMANIA v ANDREW MAXWELL LAURENCE JAY 19 MARCH 2025
COMMENTS ON PASSING SENTENCE MARSHALL AJ

Mr Jay has pleaded guilty to one count of unlawfully setting fire to property contrary to s 269 of the *Criminal Code*. He has also pleaded guilty to one count of unlawfully injuring property contrary to s 273 of the *Criminal Code*.

The particulars of the charge under s 269 of the Code are that at Campania on or about 8 July 2022, Mr Jay unlawfully set fire to a mop, being the property of a complainant. The particulars of the charge under s 273 of the Code are that he unlawfully injured a window, front door, chest freezer, fridge, kitchen appliances, food and drinks, cleaning products, clothing, a laptop, accessories and furniture items, being the property of the complainants.

In addition Mr Jay has pleaded guilty under s 244 of the *Criminal Code* to the charge of burglary. Further, he has pleaded guilty to the charge of stealing under s 234 of the *Criminal Code*.

The burglary charge relates to Mr Jay entering an office contained in a shed near a building on 8 July 2022 with intent to steal. The stealing charge relates to the stealing of some of the goods in the shed to the approximate value of \$710.

As can be seen from the description of the offending some of the charges are particularly serious, especially the burglary charge.

The background to the offending is that Mr Jay became heavily intoxicated on 8 July 2022 after drinking at the Campania Tavern. After leaving the tavern, Mr Jay entered a shed aside a nearby business. The shed was used as an office for a business.

Mr Jay spent about three hours in the shed.

Mr Jay ransacked the office. He caused the office area to flood after leaving a tap running. This caused water damage to the shed including items referred to in the particulars of the charge of unlawfully injuring property.

Mr Jay also removed items from the shed which he placed in a wheelie bin and removed from the area. The goods have an approximate value of \$710.

A few days after the offending Mr Jay was interviewed by police. At the time he denied being at the shed or knowing where it was located.

Mr Jay has subsequently pleaded guilty to the charges. The matter came before Acting Justice Martin on 26 November 2024. His Honour ordered a report from Community Corrections about the suitability of Mr Jay for a Home Detention Order. That report is now before the Court. Mr Jay has been assessed as suitable for a Home Detention Order.

Mr Jay was heavily affected by alcohol at the time of the offending. That does not excuse his behaviour, for which he has taken responsibility, but helps to explain it. The incident occurred almost three years ago. In the meantime Mr Jay has significantly reduced his alcohol intake. He is also on anti-anxiety medication. When that medication is mixed with alcohol it makes him feel unwell and lessens his desire for alcohol.

Mr Jay has prior offences for stealing and destroying property. The vast majority of that conduct occurred some two to three years prior to the current offending and is not as serious as the current offending. Mr Jay is not a youthful offender. He is almost 40 years old. However he has suffered from mental health problems, including schizophrenia and anxiety.

He currently resides at Bethlehem House. Bethlehem House provides accommodation for men experiencing homelessness in Hobart. It is the State's largest provider of crisis and transitional accommodation and is staffed by qualified and experienced people 24 hours a day.

Bethlehem House has been assessed by Community Corrections as a suitable home detention location, especially from an electronic monitoring perspective.

The house case manager has no concerns about Mr Jay complying with any directions from him while residing at Bethlehem House. He supports the nomination of Bethlehem House as Mr Jay's residence for the purposes of any home detention order.

The Court convicts Mr Jay of the offences the subject of these comments on passing sentence. If the Court did not make a Home Detention Order in the present circumstances, it would have sentenced Mr Jay to a term of imprisonment in relation to the offences. The Court will order globally, for the offences to which Mr Jay has pleaded guilty a Home Detention Order. The Court considers it appropriate to make a Home Detention Order. It has considered the pre-sentence report which recommends the making of such an order. It notes that Mr Jay has consented to the making of a Home Detention Order. The Court is satisfied that the premises at Bethlehem House are suitable premises for Mr Jay to reside at during the operational period of the order.

Mr Jay, the terms of the order made in respect of you having regard to your guilty pleas and conviction on the offences referred to in these comments on passing sentence are as follows:

- 1 A Home Detention Order is made with an operational period of 6 months.
- 2 During the operational period of the order you must not commit any offence which is punishable by imprisonment.
- 3 During the operational period of the order you must remain at Bethlehem House at [225 Harington Street, Hobart] and be there at all times unless otherwise approved by a probation officer.
- 4 During the operational period of the order a police officer will be entitled to enter the home detention premises to attend on you, search you, frisk you, and take a sample of any substance found on.
- 5 You must during all of the operational period of the order submit to electronic monitoring, including by wearing or carrying an electronic device. During that period:
 - (a) You must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;

- (b) You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
 - (c) You must comply with all reasonable and lawful directions given to you in relation to electronic monitoring, including in relation to the installation, attachment or operation of the device, or a system used for the purposes of electronic monitoring by:
 - i A police officer
 - ii A probation officer or prescribed officer
 - iii Another person whose functions involve the installation or operation of a device, or a system, used for the purposes of electronic monitoring.
- 6 You must attend at the Community Corrections office at 75 Liverpool Street, Hobart for induction into this order. You must attend the office at 10.00am on 20 March 2025.
 - 7 You must, during the operational period of the order, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through this device at all times.
 - 8 You must submit to the supervision of a Community Corrections Officer, as required by that officer.
 - 9 You must not, during the operational period of the order, take any illicit or prohibited substances. Illicit and prohibited substances include:
 - (a) Any controlled drug as defined by the *Misuse of Drugs Act* 2001;
 - (b) Any medication containing an opiate, benzodiazepine, Bupropion, hydrochloride or pseudoephedrine unless you provide written evidence from your medical professional that you have been prescribed the relevant medication.
 - 10 You must not during the operational period of the order, consume alcohol, and you must, if directed to do so by a police officer or community corrections officer, submit to a breath test, urine test or other test for the presence of alcohol.

In addition to the above, the Court makes a compensation order in favour of QBE Insurance Group against Mr Jay in the sum of \$69,038.60 to reimburse that company for payments made to the insured complainants as a result of the damage caused by Mr Jay.

Having made those orders it is implicit in doing so that I have rejected an application by the State to activate a suspended sentence of 18 months' imprisonment imposed on Mr Jay on 25 October 2021. The current offending occurred within the 18 month period referred to in that sentence. The offending that was subject to the 25 October 2021 sentence involved the stealing of low value items from supermarkets, stealing alcohol from retail outlets, motor vehicle related offending and interactions with police. The circumstances of the current offending are far removed from the offending the subject of those charges.

The activation of the 18 months suspended term of imprisonment, in my opinion, would be unjust for two reasons. First, the offending the subject of the home detention sentence is of a

different nature to the offending the subject of the 25 October 2021 sentence. Second, Mr Jay now has the chance to turn his life around with the assistance of Bethlehem House by complying with the home detention order, which includes an order that he not commit any offence which is punishable by imprisonment during the six month term of the home detention order. Therefore, in all the circumstances, the Court makes no order in respect of the suspended sentence.

The commission of any offence by Mr Jay during the six month term of the home detention order would in all likelihood result in an application to set the order aside and sentence him to a custodial sentence in lieu of the home detention order. That is a sufficient deterrent, in my opinion, to warrant the home detention order being allowed to operate and the suspended sentence not being activated.