

STATE OF TASMANIA v BNA
COMMENTS ON PASSING SENTENCE

26 MARCH 2025
WOOD J

BNA has pleaded guilty to one count of aggravated armed robbery. In committing this crime, he breached the terms of a suspended period of four months' detention that he was subject to at the time. The State seeks to activate that period of suspended detention.

The defendant committed the crime with two other youths, KTB, aged 17; and BAH, aged 16. The defendant was aged 17.

At approximately 5:00 am, BAH arrived at his mother's address in Lutana in the company of BNA and KTB, took a large kitchen knife, and informed his mother he was going out to commit offences. BAH's mother notified police.

The three youths walked to the United Service Station on the Brooker Highway in Lutana, which was a distance of approximately 850 metres.

At approximately 5:25 am, they entered the premises through the main entrance. Their entrance was captured on CCTV footage. All three were wearing various forms of face coverings. BNA was wearing a black balaclava.

Once they entered, they walked towards the back of the store, past a customer waiting to be served near the service counter, and opened a door reserved for staff only. The door provides access to the area behind the customer service counter, where the complainants, Sai Dhanekula and Ajay Panchal, were working. BAH was carrying the kitchen knife, and BNA was carrying a hammer.

BAH held the knife out towards the complainant Mr Pachal and demanded he locate "smokes" and open the till. He retreated to the corner at the far end of the staff-only area with the complainant Mr Dhanekula. The only entry to that area was blocked by the accused.

BNA pointed the hammer at the complainants and demanded they open the till. One of the complainants moved towards the terminal and BNA lunged forward with the hammer before allowing the complainant to open the till drawer by pressing a button on a monitor. BNA attempted to remove the till drawer but gave up and removed the entire cash register, disconnecting the electrical cord with the hammer.

Meanwhile, BAH and KTB entered a storeroom. KTB removed a cardboard box containing cartons of cigarettes and BAH rummaged through the contents of a drawer opposite the cash register and removed several individual packets of cigarettes.

The accused left the service station, taking the stolen items with them, and walking past two customers waiting to be served.

Police found BAH and KTB asleep at an address in Mornington, and property stolen from the service station, namely \$2,493.45 in cash and 10 sealed packets of cigarettes and tobacco.

BNA was located by police at an address in Lutana along with stolen property, including 17 packets of cigarettes and a tobacco pouch, a smashed cash till, and \$101 in cash.

BNA was arrested on 19 September 2024, and he participated in an electronically recorded interview in the presence of his mother. When allegations about the aggravated armed robbery

were put to him, he made no admissions and lied about his whereabouts. He has been detained at Ashley Youth Detention Centre from 19 September to 1 October 2024, when he was bailed, and then detained from 29 October 2024.

By committing this crime, he has breached a suspended detention order of four months imposed by Justice Estcourt on 13 June 2024 for armed robbery of an Anaconda store which he carried out alone, when armed with a knife. That order was suspended on conditions, including that he must not commit an offence punishable by imprisonment for a period of 12 months. He breached that condition by committing the service station crime, which is a very serious crime.

BNA has a significant number of past offences from 2022 resulting in sentences imposed by the Youth Justice Court, particularly for dishonesty, and including burglary and stealing, as well as the armed robbery I have mentioned. He also committed some offences involving violence.

The defendant spent most of 2023 on remand at Ashley Youth Detention Centre with respect to serious charges which were either reduced to less serious charges or not proceeded with. This period was very difficult and had an adverse impact on his development and prospects of rehabilitation. There were extensive lockdowns on a regular basis for lengthy periods, and he was only permitted out of his cell for one hour per day. He was subjected to assaults by staff and other residents and felt at risk. This case will be referred to the Commissioner for Children and Young People as potentially involving breaches of the United Nations Convention on the Rights of the Child, to which Australia is a signatory.

BNA, is 17 years of age, and will turn 18 in June this year. He has not had stable family support for a number of years. As a child, he was exposed to family violence and drug use at home. After his mother and step-father separated, he lived with his step-father and his new partner but did not feel that he belonged and felt he was neglected. His behaviour deteriorated, he disengaged from school, and he began spending time away from home until, in 2022, he was told he was no longer welcome at home. He associated with other young people who were committing crimes. He developed a close bond with two brothers, and he was included as part of their family. Unfortunately, the brothers and their family were supportive in some ways but were well-embedded in offending behaviour and drug-taking.

He was released from his lengthy period in custody on 7 December 2023 because charges were discontinued. There were no arrangements made for stable accommodation and he struggled in the community, returning to live with the family I mentioned. I note that for over four months, there was a period when he almost completely stopped offending and engaged with Youth Justice in relation to probation and community service orders, and he was making progress in relation to his drug use. Unfortunately, this did not last, his circumstances deteriorated, and the crime of armed robbery was committed in April 2024 and led to a further period of time in custody before he was sentenced on 13 June 2024.

I note that during that time at Ashley, he engaged in programs and improved his literacy and numeracy skills and vocational training and courses, such as obtaining his white card and completing a course in mechanics and a barista course. That period in custody was also challenging; lockdowns were ongoing and there was conflict with other residents. He developed associations with two residents who were ultimately his co-offenders on the United Service Station robbery. On his release, he struggled to integrate into the community, and he did not have stable and appropriate accommodation.

The crime of aggravated armed robbery currently before the Court was committed after he had been using drugs with his co-offenders and was under the influence of methamphetamine.

This is a very serious crime. If committed by an adult, it would likely attract a sentence in the range of three to five years' imprisonment.

It was brazen conduct carried out with two others, so the victims were outnumbered, and you and one of your co-offenders were armed with weapons while the victims were defenceless. You were not deterred because members of the public were present. It is the kind of crime where customers might step in to help the victims and, in such a situation, there is a real prospect of someone being gravely hurt. You understand that someone could have been seriously hurt and you are glad that did not happen.

The victims were subjected to a determined and terrifying experience in their workplace, where they were entitled to be safe. I am conscious that you did not intend to use the weapon you had to injure anyone, but they did not know that.

An important question for me is whether you ought to be sentenced under the *Youth Justice Act* or under the *Sentencing Act*, effectively as an adult. There are good reasons for taking the more serious step. You have committed this crime before, and you are nearly 18.

On the other hand, because you are nearly 18, you must understand, I am sure, that this is the last time you could be sentenced under the *Youth Justice Act* and the last time you will have the support of a youth justice worker in the community. I hope that will prove to be a wake-up call and will cause you to think carefully about the importance of working with your youth justice worker and the critical opportunity it provides you. I note that Zach Tybalt, your youth justice worker, says in his report dated 3 February 2025 that you are someone who does want change, and that you want to turn your life around. He also says there are Community Youth Justice staff members who are there for you and wanting to support you to achieve this change.

In the end, I have decided to give you the chance to show the Court that if you are given this opportunity, you will make the most of it. I will sentence you under the *Youth Justice Act*.

I will impose a period of detention. It is hoped that accommodation may be organised for you before you are released.

A stable place to live away from negative influences is essential. A possible option is accommodation in the north of the state with your mother, and that is to be explored. I take into account the letter that your mother has written to the Court indicating that she will support you living with her, and I think that is an extremely positive step. She indicates that she is confident that not only can she provide a caring and supportive home, but she can provide the basis for you to thrive amongst family and can support a much brighter future for you. There is an understanding that there may need to be a back-up plan in case that does not eventuate.

It is also essential that you address your drug problem. You understand your use of methamphetamine is a serious problem and linked to your offending.

You have breached the four-month suspended detention order. I restore part of that sentence, being six weeks, and order you to serve it. It is backdated to 15 October 2024. Your eligibility date for release on that sentence was 26 November 2024.

For the crime of aggravated armed robbery, I impose a period of detention of 12 months to be served cumulatively to the restored part of the sentence of 6 weeks. Your earliest release date, once you have served 6 months, will be 26 May 2025. In addition, I impose a period of supervised probation of 12 months from the date of your release on condition that you be subject to the supervision of a youth justice worker for that period, and that you must comply with the core conditions under s 90(3) of the *Youth Justice Act*.

I make the restitution sought and the compensation order as sought, adjourned sine die for assessment.