

STATE OF TASMANIA v BRENDAN JAMES McGUIRE
COMMENTS ON PASSING SENTENCE

3 JULY 2025
BRETT J

Mr McGuire, you have pleaded guilty to the following crimes: eight counts of burglary, three counts of stealing, one count of attempted stealing and one count of stealing a firearm or firearm part.

You committed all the crimes in one night, 30/31 October 2022 in respect of three neighbouring residential properties. You and your co-accused broke into sheds, outbuildings and motor vehicles located on these properties. You were clearly looking for property capable of easy sale, obviously for the purpose of producing some quick money to fund your drug habit. It seems that your selection of property was relatively random, at least until you came to last property where you went to considerable effort to open a firearm safe and take firearms and some ammunition. You and your companion stole five firearms. Two of these were subsequently returned anonymously to a police station, but the other three are still missing. You also took a chainsaw and a metal detector from the property from which you stole the firearms.

In each case, the property occupants were asleep in the house while you and your companion committed these crimes outside. Although you did not attempt to enter the residential buildings, breaking into the outbuildings and cars while the occupants were at home was brazen and dangerous. I have an impact statement from the occupants of the property from which the firearms were taken commenting on the very significant impact on both of them and their children, arising from the intrusion upon their sense of security and safety, which is a direct consequence of your crimes. In my view, this is a very significant feature of criminal activity such as this. You cannot be sentenced for the aggravated burglary of the houses, but crimes of this nature have a similar if not identical impact on the property owner. These owners have also commented on their sentimental attachment to some of the firearms and the other property taken by you. This again is a common consequence of criminal conduct such as this and demonstrates how selfish and damaging intrusive crimes of this nature really are.

All of the crimes are serious, but the theft of the firearms is in my view a particularly serious and concerning matter. You told police that you personally sold at least two of the firearms. You have never identified the buyers and when I enquired about this, I was told that they were casual acquaintances, and you did not really know them. As I indicated at the time, I find this difficult to believe, but even if it is true, it adds another layer of culpability to your conduct. You were clearly selling these firearms to persons who would either use them themselves for criminal activity or on sell them to others for that purpose. Making stolen firearms available to criminals is a matter of great concern. Such conduct requires a response from the courts which will make it very clear that criminal conduct which is carried out for that purpose will not be tolerated and will incur severe punishment. Whether your inability to identify the destination of the firearms comes about deliberately or negligently does not really matter, the damage is the same. The firearms remain in the hands of criminals and this directly threatens the safety and security of our community. General deterrence, denunciation and community protection are important sentencing aims in this case.

You were 30 years of age when you committed these crimes and are now 33. You have a long-standing and serious drug problem which for some years and presently relates to your addiction to methylamphetamine. Your drug problem and resort to crime to fund it, is reflected in your lengthy and very significant criminal history. You have regularly committed crimes since the

age of 17, and they have often been similar to those with which I am dealing. You have been sentenced to actual and suspended terms of imprisonment on numerous occasions. The sentencing does not seem to have had any significant deterrent effect on you and on a number of occasions where sentences have been suspended, you have breached the terms of suspension by further offending. In 2017, you were placed on a drug treatment order. Your compliance with this order was poor and it was cancelled after a short time. You were subsequently released on parole but again absconded and your parole was revoked. Your record indicates that you continued to offend after committing these crimes, or the crimes in which I am dealing, including by similar offences. On 3 August 2023, you were sentenced to 9 months imprisonment. You received a further sentence of two months imprisonment in September 2023 for breaching a police family violence order.

You have now been in custody, either on remand or serving sentences, since September 2023, apart from a short period when you were released on bail. You claim that your time in custody has been beneficial in that you have stopped using drugs and are ready to undertake a drug treatment order. While I accept that now that you are sober as a result of having been imprisoned for almost a year, you genuinely want to reform, your past record particularly with respect to non-compliance with community-based sentencing orders, suggests that your prospects of success in this regard are limited. Having said that, I take the point made by the authors of the drug treatment order assessment report that this time when you come out of prison, there will be three factors which either did not exist or were not as predominant in the past. Firstly, you have had the break from using drugs provided by your time in prison. I note that recent testing confirms your claim that you are not currently using drugs. Secondly, you are motivated to improve yourself in order to reconnect with your daughter. Finally, you now have generous supports in place in the community through an NDIS package. These matters have persuaded the authors of the report, who also expressed concerns about your past poor compliance with community-based orders, to assess you as both eligible and suitable for a drug treatment order. I note that these orders are intended for offenders where the only other option is imprisonment, but who may have reached the point where they are ready to make the effort to put criminal offending behind them and break the drug crime cycle. I accept the recommendation that you fall into this category. Accordingly, my intention is to make such an order. In respect of the custodial component of the order, I will take into account that you have already spent 330 days in custody which is not allocated to any other sentence. Were I sentencing you without making a drug treatment order, I would have sentenced you to two years imprisonment. I should say that that I make this assessment bearing in mind the sentence recently passed on your co-offender. In view of the time already spent in custody, I will impose a custodial period of 12 months.

I would make the point that the drug treatment order should not be regarded as a lenient option. Compliance with the order is difficult and requires considerable commitment. Only those who make that commitment succeed. You are well aware from past experience that if you do not make the commitment and do not succeed and the order is cancelled, you will be facing further time in prison for these crimes.

Accordingly, I intend to make a drug treatment order. I am satisfied of the following matters:

- (a) that you have a demonstrable history of illicit drug use, and that that drug use has contributed to the commission of the crimes for which you are being sentenced.

- (b) that were it not for making a drug treatment order, I would have sentenced you to a term of imprisonment and would not have suspended the sentence either in whole or in part.
- (c) that there are no proceedings pending against you in any court for sexual offences or offences involving the infliction of actual bodily harm.
- (d) that it is appropriate in all the circumstances to make the order and the facilities likely to be used for the treatment and supervision part of the order are reasonably accessible to you.
- (e) that there are sufficient staff and resources available to comply with the requirements of section 27B(3)(ba) of the *Sentencing Act*
- (f) That you have agreed in writing to the making of the order and to comply with the treatment and supervision part of the order

You are convicted of the crimes to which you have pleaded guilty and sentenced to a drug treatment order. The custodial part of the order will be a term of imprisonment of 12 months. You are not required to serve all or any of the custodial part of the order unless ordered to do so by a court if you do not comply with the conditions of the order. The conditions of the order are as follows:

CORE CONDITIONS:

1. you must not, in Tasmania or elsewhere, commit another imprisonable offence.
2. you must attend the Magistrates Court of Tasmania at Hobart at 10.30am on 9 July 2025, and thereafter that court or the Supreme Court of Tasmania as and when directed.
3. you must report to a court diversion officer at Community Corrections at Hobart within two clear working days of the making of this order.
4. you must undergo such treatment of your illicit drug use problem as is specified in this order or from time to time specified by the court.
5. you must report to, and accept visits from, your case manager or court diversion officers.
6. you must, unless there are special circumstances, give your case manager at least two clear working days' notice before any change of address.
7. you must not leave Tasmania except with the permission, granted either generally or in a particular case, of the court.
8. you must comply with all lawful directions of the court.
9. you must comply with all reasonable directions of your case manager and court diversion officers concerning the core conditions and program conditions of this order.

PROGRAM CONDITIONS:

1. you must submit to drug testing as directed by your case manager or court diversion officers.

- 2 you must submit to detoxification or other treatment, whether or not residential in nature, as directed by your case manager or court diversion officers.
- 3 you must attend vocational, educational, employment, rehabilitation or other programs or as directed by your case manager or court diversion officers.
- 4 you must submit to medical, psychiatric or psychological treatment as directed by your case manager or court diversion officers
- 5 you must attend counselling as directed by your case manager
- 6 you must be contactable by telephone at all times and inform your case manager of any change of telephone number within 24 hours of the change
- 7 you not associate with anyone determined by CMD to be an inappropriate contact, or with *BW* or *TW*, or with anyone who uses licit or illicit drugs, synthetic drugs, unidentified drugs or mind or mood altering drugs without the permission of a court diversion Officer.
- 8 you must reside at *address* and not change that address without the prior approval of CMD, and be at that address between the hours of 9 pm and 7 am daily, and present yourself there to a police officer if directed to do so, unless you have preapproval from CMD to be absent
- 9 you must not use any illicit drug
- 10 you must not use any prescribed drug except in accordance with the direction of your general practitioner, treating medical specialist or case manager, and you must notify CMD of any prescribed medication as soon as possible.
- 11 you must not consume alcohol or any other intoxicating substance.
- 12 you must submit to testing for the presence of alcohol in your body as directed by your court diversion officer, case manager or a police officer

I make compensation orders in favour of Brian Rowlands, Adam Fenton and Russell Fenton and I adjourn determination of the terms of those orders sine die.