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THE CHILDREN'S COURT OF

WESTERN AUSTRALIA

GN 567 of 2014
GN 569 of 2014
GN 571 of 2014
GN 573 of 2014
GN 599 of 2014
GN 600 of 2014
GN 617-620 of 2014
GN 35 of 2015
BM 130 of 2015

THE STATE OF WESTERN AUSTRALIA

and

DEB

JUDGE M. HERRON

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 10 SEPTEMBER 2015, AT 10.13 AM

MS F. JOHNSTON represented the State of Western Australia.

MS P. HOTKER appeared for Youth Justice Services.

MS H. O'HARA appeared for the accused.

ASSOCIATE: DEB, is that your name?

DEB: Yes.

ASSOCIATE: Thank you.

O'HARA, MS: Your Honour.

HIS HONOUR: Yes.

O'HARA, MS: Pleases the court, Ms O'Hara of the Aboriginal Legal Service. I appear today for DEB.

HIS HONOUR: Yes. Thank you, Ms O'Hara. And we have Ms Johnson for the state.

JOHNSTON, MS: May it please the court, your Honour.

HIS HONOUR: Yes. And Ms Hotker for Youth Court Services.

HOTKER, MS: Thank you, your Honour.

HIS HONOUR: This, as I understand it - and please correct me if I'm wrong - is an application for review by the State pursuant to section 40 of the Children's Court Act. Is that correct?

JOHNSTON, MS: Yes. That's correct, your Honour, but in relation to only some of the charges which are listed.

HIS HONOUR: Yes.

JOHNSTON, MS: The section 40 review covers about six of the charges which I can identify by charge number for your Honour. However, the complicating factor is that there are four new charges before your Honour which - - -

HIS HONOUR: Yes. I had some difficulty following exactly what is currently before me in terms of the various charges.

JOHNSTON, MS: Yes, your Honour. The new charges are GN617 to 620 of 2015 and it's alleged that those offences were committed whilst DEB was in the community on the intensive youth supervision order which was imposed on 24 June, which is subject to the section 40 review.

HIS HONOUR: Yes. Yes. So these were committed when?

JOHNSTON, MS: Your Honour, there's charge 618 of 2015, which is a burglary and commit offence in dwelling alleged to have occurred on 5 August and an associated stealing charge, 619 of '15.

HIS HONOUR: Yes.

JOHNSTON, MS: And I do have an application to make this morning in relation to 618 of '15, the burglary, your Honour.

HIS HONOUR: Yes.

JOHNSTON, MS: My application is to amend verbally the prosecution notice to add a circumstance of aggravation. The circumstance of aggravation, your Honour, that the State is alleging is that DEB knew or ought to have known immediately before the offence that another person was present.

HIS HONOUR: Yes. I'm just trying to find the prosecution notices. Yes. Now, I have 618, 619 before me.

JOHNSTON, MS: Yes, your Honour. Those - - -

HIS HONOUR: So - yes. Come back to - - -

JOHNSTON, MS: Those are the ones.

HIS HONOUR: Yes.

JOHNSTON, MS: So in relation to 618, which is a straight burglary, I'm seeking to orally amend the description to aggravated burglary.

HIS HONOUR: Yes.

JOHNSTON, MS: And if the description could include:

And immediately before the commission of the offence, he knew or ought to have known that there was another person present.

HIS HONOUR: So you want that in - this is in 618.

JOHNSTON, MS: Yes, your Honour.

HIS HONOUR: You want that inserted where?

JOHNSTON, MS: I think it could probably just follow on from the reference to the - committing the offence of stealing.

HIS HONOUR: Yes. Yes. Ms O'Hara.

JOHNSTON, MS: Thank you, your Honour.

HIS HONOUR: Do you have any particularly - - -

O'HARA, MS: No, your Honour. My learned friend did mention that to me and have no comment to make as to that, your Honour.

HIS HONOUR: Yes. Yes. Accordingly, I grant the State's application to amend prosecution notice number 618 by the addition of the following wording:

And, immediately before the commission of the offence, he knew or ought to have known that there was another person present.

So the intention being that that charge is now in relation to an offence of aggravated burglary. Ms Johnson.

JOHNSTON, MS: Yes. Thank you, your Honour. I don't know how you wish the matter to proceed today. I'm not sure whether my learned friend is in a position to update and enter pleas in relation to the new charges.

HIS HONOUR: It seems to me the best way to proceed is to deal - and I'm open to suggestions from counsel - to deal first with the section 40 review.

JOHNSTON, MS: Yes, your Honour.

HIS HONOUR: Because it seems to me what I'm required to do and what follows will, to some extent, depend upon the outcome of the section 40 review.

JOHNSTON, MS: Yes, your Honour.

HIS HONOUR: Because, if I uphold the State's position, I will need to deal with the original offences which are subject to that review and the decision of her Honour Magistrate Crawford in relation to preliminary - the - his conditional release order which was originally imposed, I think, on 9 February 2015.

JOHNSTON, MS: Yes, your Honour.

HIS HONOUR: So if I grant the State's application, I will then need to deal with those matters and it seems to me sensible that I would also deal with any further offences which have been committed and take DEB's pleas in relation to those further offences at that time. And if the section 40 review is unsuccessful, I can then - we can then deal with these further offences.

JOHNSTON, MS: Yes, your Honour.

HIS HONOUR: Does that make sense?

JOHNSTON, MS: Certainly.

HIS HONOUR: Yes. Ms O'Hara, you wish to say something.

O'HARA, MS: Yes, your Honour. Sorry. Just to let your Honour know, our instructions are that there's not to be any submissions made in relation to the section 40 review, that there won't be any opposition to that. DEB's instructions are to try to deal with all matters today, to proceed to sentence, and he hopes to get everything resolved.

HIS HONOUR: Yes.

O'HARA, MS: There won't be any submissions today from counsel or from - instructions from Mr Brunello in relation to the section 40 review, your Honour.

HIS HONOUR: Yes. Thank you for that. If it helps, counsel, I have read the transcript of the hearing before her Honour Magistrate Crawford on 24 July 2015, which was the hearing in relation to the application pursuant to section 37 of the Sentencing Act to correct the sentence, and I've read the submissions which were made before her Honour and how that matter transpired. And her Honour subsequently, of course, dismissed that application on the basis that it was thought best that the section 40 review proceed before the present.

I've also read the transcript of various appearances before the president, Judge Reynolds, and I note he has expressed certain views about how section 116 of the Young - yes. The Young Offenders Act is properly construed and so I note his comments about that. It seems to me the views he expressed without benefit of argument reflected the submissions made by the State at the hearing before her Honour Magistrate Crawford on 24 July 2015.

O'HARA, MS: Yes.

HIS HONOUR: So, in those circumstances, you don't seek to persuade me that the State's position is incorrect. You don't seek to maintain the position put by Mr Brunello at the hearing before Magistrate Crawford.

O'HARA, MS: No, your Honour.

HIS HONOUR: Because his submission then was section 116 isn't to be interpreted in the way submitted by the State, and her Honour did have jurisdiction to make the order that she did when the matter came before her in - I think it was in June this year. So you - - -

O'HARA, MS: Yes, your Honour. I understand the argument that was put.

HIS HONOUR: Yes.

O'HARA, MS: We do have firm instructions, though, not to take that any further, your Honour.

HIS HONOUR: Yes. Thank you, Ms O'Hara. Ms Johnson, do you wish to say anything further in response?

JOHNSTON, MS: Given what your Honour has had reference to, I don't intend to make any further submissions in relation to section 116.

HIS HONOUR: Right. Seems to me appropriate I give some brief reasons, given there is the review. And I will now proceed to do that. DEB, what I'm going to do now is I'm just going to read into the transcript - this will be typed out on some transcript - some reasons I'm going to give. You may not follow everything that I'm going to say, so I just need to give some reasons so that it can all be typed. If you don't follow everything I'm going to say, you can ask me some questions later. I'm sure Ms O'Hara can explain things to you.

It's important that I just give some brief reasons and then we will come back and deal with the other matters in a moment. Okay. On 9 February 2015, the Children's Court at Geraldton sentenced DEB in relation to seven charges of aggravated burglary and they have various prosecution notice numbers and I adopt what is set out at paragraph 1 of the State's section 40 application dated 14 August. They are GN567 of '14, GN569 of '14, GN571 of '14, GN573 of '14, GN599 of '14, GN600 of '14, and GN35 of 2015.

In respect of all of those matters, the Geraldton Magistrates Court sentenced DEB by placing him on a youth

conditional release order for a period of eight months. On 16 April 2015, DEB breached that youth conditional release order by non-compliance by failing to report to the Broome Youth Justice Services and a breach report was later prepared. On 6 May 2015 at Broome, DEB committed further offences, being a stealing offence - and the prosecution notice is BM130 of '15. Fraud offences, BM109 to 111 of 2015.

On 15 May 2015, DEB was arrested, in the course of which he attempted to escape lawful custody and was charged with that offence - the prosecution notice, BM131 of 2015 - and was later found in possession of cannabis and charged in relation to that. Charge number is BM132 of 2015. DEB subsequently entered pleas of guilty to those further offences, and on 17 June 2015, DEB appeared for sentence before her Honour, Magistrate Crawford, in the Perth Children's Court.

The matter was adjourned so further information could be obtained, and it came back before her Honour on 24 June 2015, when, on that date, her Honour cancelled the youth conditional release orders imposed by the Geraldton Magistrates Court on 9 February 2015 and imposed an intensive youth supervision order for each offence and also dealt with the offences committed in May 2015, and her Honour dealt with the matter on the basis of further information which was then provided to her.

She also took into account the time that DEB had spent in custody. The order was an intensive youth supervision order without detention, and it was ordered for a period of five months. So that was a global order in relation to the offences initially dealt with in the Geraldton Magistrates Court on 9 February and the further offences for which she was dealing with DEB committed in Broome in May 2015.

The State, by application dated 18 July 2015, pursuant to section 40 of the Children's Court Act, seek a review of the decision of Magistrate Crawford to cancel the youth conditional release orders made by the Geraldton Magistrates Court - or the Geraldton Children's Court - and to impose intensive youth supervision orders in respect of each offence, and the application for review was made on the basis that the sentence imposed was contrary to law.

It is the State's position that, pursuant to section 116 of the Young Offenders Act, the only options open to Magistrate Crawford when she was dealing with DEB was to

either cancel the conditional release order made by the Geraldton Children's Court on 9 February and substitute another conditional release order, or order DEB to serve a term of detention. It is submitted that there was no jurisdiction, given the circumstances of a conditional release order having been made, to cancel that order and instead impose an intensive youth supervision order; that order being of less severity than the conditional release order imposed by the Geraldton Children's Court.

I have read the transcript of proceedings before Magistrate Crawford on 24 July 2015 which was a hearing before her on the State's application, pursuant to section 37 of the Sentencing Act, to correct the sentence. Ultimately, Magistrate Crawford dismissed that application on the basis that the section 40 application, with which I'm currently dealing, would determine those issues. Issues were fully canvassed before Magistrate Crawford, and the same issues would have been argued before me today.

Before me today, Ms O'Hara who appears on behalf of DEB, without formally conceding the section 40 review, does not seek to put up any submission in opposition to the State's application, and, as I say, without formally conceding the application, implicitly, at least, it is accepted that the State's position is correct. It's unnecessary in those circumstances for me to set out in any detail the reasons for upholding the State's application.

It is sufficient that I record that, in my respectful view, the position put by the State was correct, or is correct, and that, once a youth conditional release order is made, the only way, if there has been a breach of that order and there have been further offending, is by the court substituting another conditional release order or cancelling the original order and directing the offender to serve a term of detention as it considers appropriate.

In the circumstances, this court and, indeed, any magistrate exercise in Children's Court jurisdiction, is constrained by section 116 of the Young Offenders Act, and in circumstances where a conditional release order has been made, the only options are as set out in 116 - those options being to substitute another conditional release order or to cancel the order and direct the offender to serve a term of detention - is not open to cancel a conditional release order once it has been made and, in its place, impose an intensive supervision order.

And, in my view, that is a correct construction of section 101 and section 116 of the Children's Court Act.

Those provisions reflect an increasing scale of seriousness of penalties imposed upon an offender. As section 101 makes clear, an intensive youth supervision order can be imposed without detention, but if it is imposed with detention, such an order is referred to in the Act as a conditional release order. So, in terms of the scale, there is jurisdiction to impose an intensive youth supervision order, pursuant to section 98 without a sentence of detention being imposed.

But if a sentence of detention is imposed, that increases the seriousness of the penalty, and it's dealt with under section 101. And once an order is made under section 101, it's then referred to as a conditional release order, and if there is further offending or breaches of that order, then that can only be dealt with by section 116. It makes sense, in my view, that that is the correct interpretation, because it would not make sense that there is jurisdiction to later reduce a penalty by imposing a lesser penalty, when, by the very virtue of the fact that the court is being required to deal with the offender again, the circumstances become more serious, because there had been a breach of the earlier order, or there has been further offending; by the very nature of those circumstances, it would not make sense if the court was able to impose a lesser penalty that was earlier imposed in circumstances where the seriousness of the offending has increased.

So, in brief, I accept that the State's submissions, as expressed before her Honour, Magistrate Crawford, correctly represent the correct construction of sections 101 and section 116 of the Young Offenders Act and that her Honour heard when she cancelled the conditional release order and, in its place, imposed an intensive youth supervision order. In those circumstances, I cancel the youth intensive supervision order imposed by her Honour in respect of the Geraldton offences for which DEB was sentenced on 9 February 2015 and in relation to the Broome offences, for which her Honour also sentenced DEB.

It now remains necessary for me to re-sentence DEB in relation to both those matters and also to deal with the further offences I'm advised DEB has been charged with. So, Ms Johnston?

JOHNSTON, MS: Yes, your Honour. There is another complicating factor.

HIS HONOUR: Yes.

JOHNSTON, MS: There's a Broome charge, 130 of 2015. It
- - -

HIS HONOUR: Sorry. Broome - - -

JOHNSTON, MS: It's Broome 130.

HIS HONOUR: 130?

JOHNSTON, MS: Yes. Your prosecution notice indicates that on 24 July that offence was also subject to the intensive youth supervision order, and that is reflected on DEB's record. However, it didn't make the court listing today. For some reason it has just fallen through the cracks.

HIS HONOUR: That doesn't seem to me to present a problem. And so I have difficulty reading these court sentencing records; I have difficulty following what they mean. But, subject to hearing from Ms O'Hara, it seems to me there's no difficulty with me dealing with that today, unless somebody can point out some procedural difficulties with that. It seems to me, practically, to make sense that we try and deal with all of the matters today, if it can properly be done.

JOHNSTON, MS: Yes, your Honour.

O'HARA, MS: Your Honour, I've just been able to view that particular charge on the record. DEB's instructions are to try and deal with everything today, your Honour, if possible.

HIS HONOUR: Yes.

O'HARA, MS: He is in a position today to enter pleas to the charges that haven't had pleas entered; so the breach of bail, the aggravated burglary and commit offence in dwelling, the associated - the stealing and trespass charge. So CC/GN/671 through to 620.

HIS HONOUR: Can I hand this to you, Ms Johnston? Can I ask you, perhaps, to mark, for my benefit, what I'm dealing with today, and - - -

JOHNSTON, MS: Yes, your Honour. Your Honour, I would say that the Broome charge 130 which isn't listed before your Honour today - - -

HIS HONOUR: Yes.

JOHNSTON, MS: - - - because of some administrative error needs to be dealt with as part of the re-sentence on the section 40 - - -

HIS HONOUR: Yes. And I'm content to do that.

JOHNSTON, MS: Yes. Yes. I will mark - - -

HIS HONOUR: I'm content to proceed on that basis - - -

JOHNSTON, MS: - - - the charges, your Honour.

HIS HONOUR: - - - but do I need to do anything procedurally other than simply saying I'm prepared to deal with it?

JOHNSTON, MS: I don't believe so, your Honour. As long as the orders encompass that Broome charge 130 - - -

HIS HONOUR: Yes.

JOHNSTON, MS: - - - there shouldn't be any problem with listings then dealing with the lack of listing, so to speak. I would just also indicate in relation to the matters that DEB is going to plead guilty to the - upon him entering a plea of guilty to the aggravated burglary 618 the state would apply to withdraw, discontinue the 619 associated stealing.

HIS HONOUR: You're confusing me further, but we will deal with it - - -

JOHNSTON, MS: No worries, your Honour.

HIS HONOUR: We will deal with it one at a time. So, yes, can I just ask you perhaps to indicate on that if that's the correct document I need to look at, what are the matters I'm dealing with today and what further matters I'm required to deal with today which are not on that document. Yes. If that could just be handed Ms O'Hara - that you can double-check that (indistinct) dealing with all of the matters that you require me to deal with.

....., **MS:** (indistinct)

O'HARA, MS: Thank you.

HIS HONOUR: You're welcome to look at it, Ms Hotker, if you can usefully add anything.

HOTKER, MS: No. Thank you, your Honour.

HIS HONOUR: Yes. Thank you. Yes. So they're all of the Geraldton matters. The Broome matters are not on here. The Broome matters that Ms Crawford dealt with are not on here, are they?

JOHNSTON, MS: There's one Broome charge, your Honour, on the - - -

HIS HONOUR: There they are.

JOHNSTON, MS: - - - on the second page of the record.

HIS HONOUR: Are those those - - -

JOHNSTON, MS: That charge should also be subject to the review because her Honour Magistrate Crawford imposed the intensive use supervision order - - -

HIS HONOUR: Yes.

JOHNSTON, MS: - - - in relation to that - - -

HIS HONOUR: So I've got to deal with - - -

JOHNSTON, MS: - - - Broome charge 130.

HIS HONOUR: - - - all of those matters as well.

JOHNSTON, MS: Just the 130, your Honour, not the other Broome matters that were - - -

HIS HONOUR: Sorry. That's the matter that you've - - -

JOHNSTON, MS: - - - disposed of - - -

HIS HONOUR: - - - referred me to which is not before me.

JOHNSTON, MS: Which for some reason has fallen through the cracks, your Honour, and it's not listed today.

HIS HONOUR: All of these other Broome matters, 109, 110, 111, 131, 132 - - -

JOHNSTON, MS: Yes, your Honour.

HIS HONOUR: - - - I don't need to deal with today.

JOHNSTON, MS: No, your Honour.

HIS HONOUR: Yes.

JOHNSTON, MS: Those matters are finalised.

HIS HONOUR: Yes. So it's just in relation to 130 of '15. Can I just take a moment to see whether I can find on this file the prosecution notice in relation to it.

JOHNSTON, MS: It is there, your Honour.

HIS HONOUR: I beg your pardon?

JOHNSTON, MS: Your Associate found it for us this morning.

HIS HONOUR: Yes. I now have the Broome matter, 130 of 2015 in front of me and that sets out the offence of on 6 May 2015 DEB stole a purse containing cash and cards from the person of SP the property of the aforesaid - that's SP. Is that the correct matter?

O'HARA, MS: I believe that's the correct matter, your Honour. I do note that when DEB was sentenced for that by Magistrate Crawford it was mentioned that DEB did dispute that there was the \$200.

HIS HONOUR: Yes.

O'HARA, MS: Yes. It's that matter. Yes.

HIS HONOUR: Yes.

O'HARA, MS: (indistinct) it didn't really go anywhere. It was just raised as an issue.

HIS HONOUR: Yes. And I think - - -

O'HARA, MS: It's that particular matter.

HIS HONOUR: - - - it was able to be dealt with without that - - -

O'HARA, MS: Yes. Thank you.

HIS HONOUR: - - - being an issue and the facts were read out before her Honour at that - - -

O'HARA, MS: Yes.

HIS HONOUR: - - - (indistinct) we're dealing with that matter and it's in respect of that that Magistrate Crawford dealt with DEB by also - - -

O'HARA, MS: Yes.

HIS HONOUR: - - - including that in relation to the youth intensive supervision order - - -

O'HARA, MS: Yes.

HIS HONOUR: - - - she imposed of five months.

O'HARA, MS: That's correct. That's why it's noticeable, because there was that particular issue raised.

HIS HONOUR: Yes.

O'HARA, MS: Yes.

HIS HONOUR: So I now have to deal with DEB in relation to that matter, the Geraldton matters that have been highlighted by Ms Johnston and now deal with the further Geraldton matters that were initially raised.

O'HARA, MS: Yes, your Honour.

HIS HONOUR: Have I got that right?

O'HARA, MS: Thank you.

HIS HONOUR: Yes. So coming back to those fresh matters and - sorry - Ms Johnson, have I been incorrectly pronouncing your name? Is it Ms Johnson or Johnston?

JOHNSTON, MS: Johnston.

HIS HONOUR: Johnston. I beg your pardon. Yes. I'm dealing with Geraldton number 617 through to 620; is that correct?

JOHNSTON, MS: They're the new - are they the new matters?

HIS HONOUR: Yes. Well, that's what I'm asking. That's my understanding.

JOHNSTON, MS: Yes, your Honour. DEB hasn't entered pleas in relation to those charges yet.

HIS HONOUR: Yes. Well, I have before me these matters, starting at - no - 618, which is the aggravated burglary charge involving the dwelling of YEC and that's as amended earlier today; then the stealing charge in relation to the same matter; then a trespass charge, 620 of 2015. Are they the only matters?

JOHNSTON, MS: And there's 617 of '15, your Honour, which is a breach of bail undertaking. I believe it's on a separate prosecution notice.

HIS HONOUR: (indistinct) these papers in a state of disarray. Yes. I have that now. Yes. So there are those four matters and - - -

JOHNSTON, MS: Yes, your Honour.

HIS HONOUR: Yes. DEB hasn't pleaded to those matters.

JOHNSTON, MS: That's correct.

HIS HONOUR: Yes. DEB, I'm going to read these further four matters to you and I just ask you, please, to advise whether you're pleading guilty or not guilty to these offences. Ms O'Hara, before I do that you've taken instructions from DEB - - -

O'HARA, MS: Yes, your Honour. I have.

HIS HONOUR: - - - and he's in a position to plead to each of those four matters - - -

O'HARA, MS: Yes. He is, your Honour.

HIS HONOUR: - - - today. So I'm going to read them one by one to you and if you don't understand what I'm reading just let me know. So the first matter is Geraldton 617 of 2015, which alleges that on 1 September 2015 at Geraldton without reasonable cause you failed to appear in Geraldton Children's Court, such appearance being a requirement of a bail undertaking entered into you - entered into by you on 19 August 2015. Do you plead guilty or not guilty?

DEB: Guilty.

HIS HONOUR: Then 618, and this reads that on 5 August 2015 at Geraldton without consent you were in the dwelling of YEC and committed an offence therein, namely, stealing valued at \$50 and immediately before the commission of the offence you knew or ought to have known that there was another person present. Do you plead guilty or not guilty?

DEB: Guilty.

HIS HONOUR: And then at the same place and on the same day you stole a set of household keys to the value of \$50

being the property of YEC. How do you plead; guilty or not guilty?

JOHNSTON, MS: Your Honour, I do seek to withdraw that associated stealing charge - - -

HIS HONOUR: So - - -

JOHNSTON, MS: - - - given the plea of guilty to the burglary.

HIS HONOUR: Okay. So that Geraldton 619 of 2015 is formally withdrawn and I note that that matter has been withdrawn. That then leaves the final matter, Geraldton 620 of 2015, that on 18 August 2015 without lawful excuse you trespassed on 40 Dorothy Street, Geraldton. How do you plead; guilty or not guilty?

DEB: Guilty.

HIS HONOUR: Yes. I record those guilty pleas and enter or record judgments of conviction in relation to each of them. Now - - -

JOHNSTON, MS: Does your Honour wish to hear the facts in relation to those new matters?

HIS HONOUR: Yes. Can I come to those - the facts in relation to the Broome matter were read before Magistrate Crawford and obviously the facts in relation to various Geraldton matters were read before the Geraldton magistrate at that time. I don't need you to read the facts of the Broome matter, 130 of 2015, because I've read the transcript and seen how the facts were read, but other than knowing that they're aggravated burglary charges I don't know what the facts are in relation to the matters dealt with by the Geraldton Magistrates Court at that time.

JOHNSTON, MS: Right.

HIS HONOUR: And - yes - if I can also ask you to read me the facts of the three matters today - - -

JOHNSTON, MS: Certainly, your Honour.

HIS HONOUR: - - - that DEB has pleaded guilty to. So it might be easy for you, Ms Johnston, if you read the facts of those three new matters to start with.

JOHNSTON, MS: Yes. Certainly, your Honour. In relation to charge 617 of '15, which is a breach of bail undertaking, the facts are on Wednesday, 19 August this year DEB was released from bail from the Geraldton Police Station after signing a bail undertaking. As part of that undertaking DEB agreed that he would appear at the Children's Court in Geraldton on 1 September, however he did not appear on that date and as a result a warrant issued for his arrest and when he was arrested on 2 September he indicated that he had slept in.

In relation to the aggravated burglary and commit offence in dwelling, charge 618 of '15, the facts are at 3.50 am on Wednesday, 5 August this year DEB entered the dwelling of the complainant in Geraldton via a glass sliding door. He didn't have consent to enter. The complainant in the matter is 83 years old. She was home, asleep. She was awoken by DEB attempting to gain entry to her locked bedroom door. The complainant pressed her duress alarm and police were notified. DEB stole a set of house keys from the dwelling. Forensic officers attended the scene and conducted an examination of property of the complainant's and discovered DEB's fingerprint on a vase inside the dwelling.

Charge 620 of '15, which is a trespass, the facts are at 1.50 pm on 18 August this year DEB was in the rear yard of an address in Dorothy Street in Geraldton. He was disturbed by the complainant before fleeing on foot and he was identified by way of fingerprints found on a window at the rear of the property. On 2 September when DEB was arrested he declined to be interviewed in relation to these matters. The facts in relation to the other burglaries - the Geraldton burglaries are Geraldton charge 567 of '14, which is an aggravated burglary and commit offence in dwelling.

The complainant is HD. The facts are between 10 pm on 4 September 2014 and 1.15 am on 5 September 2014 DEB and his co-accused were walking along the road outside an address in Urch Street in Beresford. DEB and the co-accused jumped the rear fence and gained entry into the yard. They went to the garden shed and opened the door and looked inside. DEB and the co-accused went to the back of the house and cut the flyscreen to enter the rear patio area.

They then entered the house via an unlocked rear door and walked through to the kitchen area, where they removed property items, including an Apple iPhone 4, an Apple iPad, \$90 cash and a black handbag belonging to the complainant

to the value of \$1110. At the time of the offence the complainant was asleep in the lounge room, where DEB and the co-accused had walked past her to gain entry - sorry - gain access to the property which they had taken from the kitchen. DEB and the co-accused left the house via the rear door and over the fence. When he was interviewed on 29 September last year DEB made full admissions in relation to his involvement in that burglary.

The next burglary is Geraldton charge 571 of '14. It's an aggravated burglary and commit offence in dwelling. The complainant is JC. At about 2 am on 6 September 2014 DEB and his co-accused were outside an address in Glendinning Road in Tarcoola Beach. DEB and the co-accused had come from a party earlier in the night and had talked about committing a burglary. DEB and the co-accused entered into an open garage at the side of the house and then through an unlocked door to the games room of the house.

The co-accused removed a wooden pool cue from the games room before disturbing the complainant's dog. DEB and the co-accused left the games room and exited the house before walking around the corner to the front of the two-storey house. DEB climbed the fence into the pool area from the front yard whilst his co-accused climbed up onto the second storey balcony, where the pool cue was passed up from below to try to force entry to an opened window.

The complainant was awoken by the noise and yelled at DEB and the co-accused to get off his property. DEB and the co-accused jumped back over the fence and also directly off the second storey balcony to the front yard before throwing rocks at a large front window of the house, smashing two of the windows. The pool cue was recovered at the scene by the complainant and DEB made full admissions in relation to that offence when he was interviewed on 29 September last year.

The next burglary charge is Geraldton charge 573 of '14. It's an aggravated burglary and commit offence in dwelling in relation to complainant MH. The facts are between 4.15 pm and 7.05 pm on 22 September last year DEB and the co-accused were outside at an address in Pollett Street in Spalding. DEB and the co-accused climbed into the backyard of the property via the back fence. They removed socks from the complainant's clothesline and placed them on their hands.

DEB and the co-accused broke the wooden lattice off the patio gate and entered the patio area before gaining

entry to the house via the back door. Once inside DEB and his co-accused rummaged extensively through cupboards and drawers in all of the rooms of the house, causing a large mess. DEB and the co-accused removed various property items, including a gold neck chain to the value of \$900, cash to the value of \$150 and two ornamental swords to the value of \$100.

DEB and his co-accused left the house via the entry point - returned to the co-accused's residence and when DEB was interviewed on 29 September last year he made full admissions in relation to his involvement in that offence. I think I may've missed the facts in relation to the burglary 569 of '14, your Honour.

HIS HONOUR: Yes.

JOHNSTON, MS: Just go back to that. It's an aggravated burglary and commit offence in dwelling. The complainant is PB. Some time between the hours of 11.30 pm on 5 September last year and Saturday, 6 September last year DEB was outside an address in Tarcoola Beach. DEB and the co-accused walked to the rear of the property and accessed the back courtyard via a sliding gate. One of the co-accused used a rock to smash open a glass sliding rear door and DEB reached in and unlocked the door, gaining entry to the house.

Once inside DEB and the co-accused went to the second storey of the house and searched the main master bedroom, looking through the walk-in robe. The co-accused located a key to the complainant's secured gun safe in the walk-in robe area and unlocked the safe. DEB and the co-accused removed six firearms and ammunition from inside, including two shotguns and two rifles, a Hornet and an air rifle. DEB and the co-accused placed the firearms on the bed and wrapped them up in towels from the complainant's room. DEB and the co-accused located a metal safe inside the walk-in robe and dragged it out into the bedroom area.

DEB went back down the stairs and out into the complainant's shed with the co-accused and removed a hammer and a wooden pickaxe before returning upstairs. DEB wedged the pick into the side of the safe whilst the co-accused took turns to smash open the safe, which was eventually broken open. DEB and the co-accused removed property from within, including jewellery items to the value of \$30,000 and cash to the value of \$2000. DEB and the co-accused placed the items inside a large black bag belonging to the complainant, as well as further property

items, including bottles of alcohol, before leaving the house.

The co-accused took belongings - sorry - took keys belonging to the complainant's Toyota LandCruiser, which was parked in the driveway and tried to start the vehicle, but failed due to the immobiliser being activated. DEB and the co-accused left the scene on foot, with DEB carrying one of the 22 calibre rifles in its gun case. They walked back to the - to DEB's relative's address in Rangeway, where the stolen property was secured under the house.

DEB made full admissions in relation to his involvement when he was interviewed by police on 24 September. The six firearms which have been taken from PB have still not been located and DEB indicated he was unable to tell police where the firearms are located. Geraldton charge 599 of 2014, which is a burglary and commit offence in place in relation to complainant FM. The facts are between 5 am and 5.40 am on Sunday, 5 October last year DEB attended residential premises situated in Tyne Court in Mount Tarcoola.

DEB was in company with another co-offender and together they formed a common intention to attend the place and steal two motorcycles. DEB and the co-offender were aware that the motorcycles were located in a rear shed at this address due to knowing the complainant. Both DEB and the co-offender went to the address and entered the yard through the side fence and entered the shed to the rear of the property. From inside the shed DEB stole a Honda off-road racing motorcycle.

There's an associate charge, Geraldton 600 of 2014, which is steal motor vehicle. Your Honour, that charge relates to the Honda off-road racing motorcycle taken from FM. DEB and the co-offender both wheeled the motorcycle away from the house and onto a new road construction area in Mount Tarcool which was approximately 200 metres from the end of Tyne Court, where FM resided. On 5 October last year DEB was observed by police riding on the stolen motorcycle in a gully on the new roadworks.

DEB saw police and rode the motorcycle past the attending police vehicle within plain sight of the officers and the officers recognised DEB. DEB rode along the new development adjacent to Tyne Court and entered the street, passing the complainant. Police tried to apprehend

DEB, but he continued onto Sutherland Street and turned back into bushland to access the new roadworks. DEB was seen by another police vehicle heading towards - and evaded the police vehicle, turning back towards Sutherland Drive, and left the area at speed.

Police conducted a search of the area and traced DEB's movements back into bushland some two kilometres from his last-known location. Police later recovered the motorcycle. It had been abandoned in bushland, however police were unable to locate DEB. On the same date, about 7.20 pm DEB was located at his home in Rangeway and he didn't comment in relation to the allegation to police when he was interviewed later that day. At the time of the offence DEB did not have any permission from the owner to use the motorcycle and both motorcycles were returned to the owner at the time that they were recovered.

There's one final Geraldton matter, your Honour, which is an aggravated burglary and commit offence in dwelling. It's Geraldton charge 35 of 2015. The facts are between 10 am and 12 pm on Monday, 19 January this year DEB was in company with another on Osborne Street in Spalding. The pair have decided to break into the complainant's house. DEB has knocked on the door of the house and heard no response. He then jumped the side gate and entered into the rear yard. The co-accused forced open a small kitchen window, and both have climbed inside the house.

DEB and his co-accused have rummaged through the house removing various property items, including a jewellery box containing gold bracelets, rings, necklaces and earrings to the value of \$3500. DEB and the co-accused located the complainant's secured, locked gun safe from inside his bedroom wardrobe and forced it from its mounts. They then dragged the gun safe into the lounge room, where they spent what police consider a considerable time attempting to pry it open.

DEB and the co-accused removed two firearms from inside the safe: a double-barrelled shotgun and an air rifle. The complainant returned home and was disturbed by DEB and the co-accused - or other way around - the complainant disturbed DEB, and they climbed out of the northern side window of the house and jumped the side fence into a disused alley. DEB and the co-accused carried the firearms across the road into dense bush area, where they concealed the firearms under tin in the bush.

Police attended and tracked footprints from the scene and, after an extensive search of the bush, located the concealed firearms. DEB made full admissions in relation to this offence when he was interviewed on 21 January 2015 by police. Your Honour, that covers the Geraldton matters that are subject to the section 40 review, apart from Broome charge 1302 of '15.

HIS HONOUR: Yes. Thank you, Ms Johnston. Ms O'Hara.

O'HARA, MS: Yes, your Honour. DEB is 17 years of age. He has - it has been noted previously in reports from information provided by DEB and also by his younger sister who is - not his younger sister. His older sister, but the younger of the two sisters that have taken care of DEB at different times, G and A. G, the younger of the two, has noted that DEB did grow up in an environment where there was frequent exposure to alcohol and substance use, and that has been confirmed by DEB.

Your Honour, I do note that there - not on every occasion - but, frequently, there has been full admissions made by DEB to the police, and often in relation to, certainly, the charges that do have the - the matters that do have the element of the firearms. There has certainly been, as I understand it, full cooperation with the police, and I do understand on both those occasions that DEB himself never retained that property, and, as I understand it, adults did take possession of that property, and DEB did not know the whereabouts of those items. So, your Honour, while he didn't always make full admissions, it has frequently been the case. Your Honour - - -

HIS HONOUR: Wasn't it just fortuitous he came across the firearms, or was that the reason for breaking into the house as it's - - -

O'HARA, MS: No. As I understand it, it was just fortuitous, and it may be to do with the location; it being - Geraldton is obviously a city, but it is also located in the, obviously, a rural area as well, your Honour. So I don't - as I understand it, that wasn't the intention. It - yes. Fortuitous - - -

HIS HONOUR: It's quite concerning that stealing firearms and then hiding them, and then they're not recovered.

O'HARA, MS: Yes. It is, your Honour. And I know, previously, I have viewed footage where the police were trying to speak to DEB and the other juveniles as to where the weapons may have gone, and that was their main

concern, and they were very professional about it, and, unfortunately, the boys weren't able to assist them. But they're my instructions, your Honour, that, yes, certainly, it wasn't the case that they were seeking that.

In DEB's case, what has occurred is he does admit that he has got a heavy cannabis use issue, and he says that every day he wants to use cannabis. It's something that he is well aware of, and when he participates in burglaries, that's his main motivation. So he's then getting items, objects, and he's swapping that for cannabis. There are people that he associates with that do use methamphetamine. DEB said that he doesn't, but his main focus is cannabis.

And he said since he was about 15 years of age he has been a very heavy user, so his offending has focused predominantly on taking items - any items - and, obviously, the more sophisticated offending does seem to be when he is with others; when he's on his own, it doesn't seem as sophisticated. But the focus from DEB's point of view has certainly been to get items to trade for cannabis. Your Honour, I'm sure you're well aware of the report that was provided to Magistrate Crawford. It does raise, as a result of an interview that DEB with Ms Tanena Oliveri, a psychologist - - -

HIS HONOUR: (indistinct) yes.

O'HARA, MS: And that report is before the court and was previously so. That's dated 23 June. Within that report at paragraph 7 on page 304 - - -

HIS HONOUR: Let me just locate that in amongst all this documentation I have. Yes. I now have it.

O'HARA, MS: Yes, your Honour. There is reference in that report to - and it is noted that the circumstances were in a custodial environment, and that can sometimes impact on the results and on the progress of an investigation such as Ms Oliveri conducted. But it is noted that DEB would seem to present as having a below average or low average intelligence, and this being likely to contribute to non-compliance with community orders as well as other flow on effects, such as difficulties with reasoning, judgment, perspective taking and impulsivity, and consequential thinking.

So, your Honour, that's obviously a significant factor in DEB's presentation and his personal circumstances. And, your Honour, he does take responsibility for his

actions. Bar the issue of the \$200 in the purse, in relation to - I believe it's charge 130 of 2015 - the Broome matter, he does accept that facts. He has entered pleas at early opportunities, and, in regards to the victims and his thoughts for the people involved, he has told me today that, while he didn't sight the elderly lady in the more recent burglary - the 83 year old lady. He didn't sight her. He didn't enter the bedroom.

That he says that having learned that she, obviously, was very afraid and pressed the alarm that she had - her personal alarm - that he accepts that she would have been very afraid, and he does have some, I dare say, embarrassment and remorse as to that behaviour, your Honour.

HIS HONOUR: Remind me when that offence was committed, please.

O'HARA, MS: Sorry, your Honour?

HIS HONOUR: Remind me when that offence was committed?

O'HARA, MS: That was the - I believe it might have been 6 August. I will just - that's the more recent matter in relation to - - -

HIS HONOUR: Yes. Was that 5 August?

O'HARA, MS: Yes. Sorry. 5 August not the 6th. I apologise, your Honour.

HIS HONOUR: Yes. The reason I've raised that with you; when you go back to Magistrate Crawford's sentencing remarks on 24 June 2015 (indistinct) the sentencing proceedings before her on 24 June 2015 - I'm just finding the matter. And you of course appeared for DEB on that occasion. This is at - I don't know whether you have the transcript in front of you - - -

O'HARA, MS: I do, your Honour, yes.

HIS HONOUR: You said this at page 7 of the transcript in regards to the elderly lady - and this is the stealing offence, when he took her handbag.

O'HARA, MS: Yes.

HIS HONOUR: You said:

When I first met DEB, his response to discussing that wasn't particularly good, but, having gone back and spoken to him a few more times, he's actually really embarrassed about what happened, and that's why he doesn't discuss it or look at your properly.

O'HARA, MS: Yes.

HIS HONOUR:

And so, yes, he has recognised that that was a really low point to have done that, and, your Honour, he does hope to be involved in football and, obviously, the Wirrpanda Foundation.

O'HARA, MS: Yes.

HIS HONOUR: So, having said that - and I think her Honour touches upon that later in her sentencing remarks - and yet, within a matter of less than two months later - a matter of weeks later - he's offending again by breaking into a house, at 3 o'clock in the morning, of an elderly lady.

O'HARA, MS: Yes.

HIS HONOUR: A lady that was 83 years of age, so - - -

O'HARA, MS: Yes, your Honour. And that's certainly true what your Honour says. I notice in the matter that's referred to with the purse, that your Honour was referring to from the transcript, obviously, he had personal interaction with that particular person. He saw her. He saw her age. As I understand it - the burglary matter - he tells me he wasn't aware of the age of the person living in that house, and, certainly, that's no excuse, your Honour, but, as I understand it, he didn't actually personally sight the age of the person, but we were able to tell him about her circumstances and how she felt and how she relayed that information to the police. But I accept what your Honour says.

Your Honour, it's evident that when DEB has been subject to YCROs - there has obviously been the two occasions previously that he was. And I believe this has already been canvassed, but just to raise it briefly; when he was placed on the YCRO on 9 February - sorry. On the 1st - the initial one, 4 November 2014, he relocated to Broome in order to try to embark on that order. What occurred there was that DEB's aunty who he was to stay with had recently lost her husband, and she really wasn't

in a good position to support DEB, and DEB ended up being enrolled in a stockman's course that was some distance out of Broome.

He did that for - I understand it varies between a couple of days. DEB thought it was four days. It was very much classroom based in the beginning. He wasn't happy there. It was difficult for him to go back and live with his aunty, because she actually had so much on her plate in terms of dealing with the passing of her husband, and there was a - and it's still ongoing, I understand, an issue as to where her husband could be buried. She wasn't happy with him not being able to be buried on country, and that's an ongoing situation which made it very difficult for DEB to receive the support that he needed.

In relation to the JCRO that he was placed on on 9 February, I - perhaps I've got those round the wrong way - but the initial JCRO, there was also the issue of when he relocated to the Dampier Peninsula, the plan was that he would be taking up a role in the rangers organisation up there, and they do offer a very positive, community-supported avenue of employment and training for young Aboriginal males. What happened though was by the time that DEB arrived there, that program wasn't operating, or it was having a break, and he really wasn't able to participate in that.

So those two occasions, really - and, obviously, DEB takes responsibility for his own actions - but that was against a background of him having issues; obviously, some concern as to his cognitive functioning in certain ways, and also not having support in place. I do know from dealing with DEB that at different times he has resided with his sister, G. He has also resided more recently, as is reflected in the court reports, with his elder sister A.

His mother hasn't had a lot of contact at all with ILS while we've been assisting D. I do know that she lives in a community called (indistinct) Wells community which is an Aboriginal-owned community, and it's some distance - - -

HIS HONOUR: Yes. I'm aware of Barrel Well community, yes.

O'HARA, MS: Yes, and it is quite isolated, certainly from DEB's point of view; he considers it very isolated. We did have another child there who was trying to do an order in that community, and it was quite difficult in terms of

actually being able to access what needed to be done and the services, so DEB, from his point of view, he doesn't really wish to reside in that location, so what has happened is he has moved around between different family members.

More recently, we've learned that when G did take over the care of DEB after the sentencing by Magistrate Crawford that, when A came - the older sister, A - came down to visit, she felt that DEB was with some older males, who she saw as using drugs but also methamphetamine as well, so she stepped in to take DEB back to Geraldton with her. Unfortunately, when she was up in Geraldton - she's got four children she was caring for - she wasn't able to chase DEB around. DEB, unfortunately, didn't engage with the order. He was using cannabis heavily, and he was spending time with other boys that were doing similar things and perhaps worse as well in terms of their drug use. So, your Honour, things didn't go well. DEB takes responsibility for that.

HIS HONOUR: That occurred after he was sentenced by Magistrate Crawford in - - -

O' HARA, MS: Yes.

HIS HONOUR: - - - June, didn't it?

O' HARA, MS: Yes. Because there was some hope that DEB would reside with G, that G and DEB would both be involved in David Wirrpanda Foundation and that DEB would have that support, because I think it was recognised that he did really need to be guided.

HIS HONOUR: Yes.

O' HARA, MS: And it needed to be quite - - -

HIS HONOUR: What happened about that? I've got this further specific court report, which is dated 8 September, which updates me as to what has happened, but it doesn't seem to refer to the Wirrpanda Foundation report, and I raise that because when Magistrate Crawford sentenced DEB - or re-sentenced DEB on that occasion and imposed the order that she did, she was very much, I think, influenced by the recommendations that DEB enrol in this program and that there was supports - - -

O' HARA, MS: Yes.

HIS HONOUR: - - - put in place to enable him to do that, and this report doesn't deal with any of that, and it seems that, really, nothing ever eventuated.

O'HARA, MS: No, it didn't, your Honour, unfortunately. My instructions are that DEB did go to live with G at her address in Kallaroo for about one month, and I do know, from speaking to DEB and G, that they were quite enthusiastic about the Wirrpanda Foundation. It didn't eventuate.

DEB didn't attend school in Kallaroo, and it was at that point that DEB, rather than participating at Wirrpanda with G - and G didn't either - that DEB took up with a group of three male cousins on his mother's side, some older - older and younger, and there was alcohol use and use of cannabis and offending, and it was at - around this point that A, who's just, I think - believe, a couple of years older than G, visited, became quite concerned about DEB and then took him back to Geraldton, and he did reside with her.

He was welcome there, but unfortunately, things did not go well, and he started getting in trouble and smoking a lot of cannabis. There's some information here as to - he was regularly visiting drug dealers in order to obtain the cannabis. He wasn't attending school, and he wasn't engaged in sporting activities, and his sister, A, did find it difficult to change that situation. The more recent offending - the burglary was committed alone, and he certainly has no excuse in relation to that.

He doesn't try to shy away from it, and he does raise cannabis use as the motivating factor, and I do note, in the report from Youth Justice - one of the reports - the more recent one - said that there was some assistance offered to DEB to try and get to court, and he knocked that back, and he accepts that. He felt that he - he, to some extent, feels that an order is beyond him at the moment, and part of that is, obviously, the cannabis use.

Your Honour, I would respectfully submit that DEB's matters are before your Honour in relation to - perhaps they have arrived here by way of the section 40 review and the application prior to that for a correction of sentence that then morphed into the review. I mean, it may be that the prosecution may have sought the matters to come to this jurisdiction, but I don't know whether that would be the case. I think, in all likelihood, he may as well - may have well stayed before a magistrate.

It is accepted, unfortunately, that he is in the position where he is in a third strike position, unfortunately, and DEB is well aware of that. He has made that known to him, and he's accepting of that, and he has entered pleas in full knowledge of that. He has plans, your Honour, to - if there is to be a custodial sentence, that that would give him the opportunity to refrain from the drug use, and he has plans to get the appropriate help for that, and then he hopes to, if he sent a custodial disposition - to then continue on with refraining from the cannabis use, and he would like, again, to have an opportunity in the Broome area to have some employment and look at some training and employment in the Broome area, your Honour.

Obviously, there is a lot that hasn't worked out for DEB. Some of that is obviously his own - of his own doing, and he has been offered help, and he hasn't taken it up, but at other times, there hasn't been the appropriate help there that he has obviously needed. Your Honour, DEB, today - he acknowledges that he really has burnt a lot of bridges in terms of his sisters, and he is not willing to go to Barrel Well, where I think his mother would take him if he was willing.

So, your Honour, in terms of a disposition, I believe that it is very limited to do with, obviously, mandatory legislation and also DEB's history as to previous orders, and offending has obviously got a role to play.

HIS HONOUR: Had I been dealing with this at the time it came before Magistrate Crawford, consistent with the ruling I gave earlier, the options open to me - putting to one side these further matters - at that time - this in June - would have been to impose a further conditional release order or sentence DEB to a term of detention. As I read the transcript - and obviously I will hear from Ms Johnston in a moment - as I read the transcript, given the further material which was put before Magistrate Crawford at that time regarding the hope that the Wirrpanda Foundation might be an avenue that DEB was able to take up to prevent him from being sentenced to a period of detention, the state, it seemed to me, was supportive of that. Obviously, the state - - -

O'HARA, MS: Yes.

HIS HONOUR: The state's position is that could have been achieved, it seems to me, by another conditional release order being imposed to allow him to attend the Wirrpanda - - -

O'HARA, MS: That's correct, your Honour, yes.

HIS HONOUR: - - - Foundation program. So that seemed to me - and again, this is all subject to Ms Johnston saying anything to the contrary - that seemed to be the state position as at that time, and it could have been dealt with in that way. We've now gone beyond that, and it has gone back and forth in the courts, which is nothing to do with DEB. That's not DEB's fault.

I think what's most concerning is that now, in August this year, these further offences, which have - of the same kind again. The further cannabis use - when I first looked at the matter, I had a concern that given the matters are still being dealt with in the court, DEB hadn't had the opportunity to take up the Wirrpanda Foundation - - -

O'HARA, MS: Yes.

HIS HONOUR: - - - program, but I've heard what you've said about that, and this further updated report indicates that there have been attempts to find DEB stable accommodation and stable circumstances, none of which have worked out, and you've elaborated on why that has been the case. It really constrains what I can do - - -

O'HARA, MS: Yes, your Honour.

HIS HONOUR: - - - doesn't it? Even if I had been minded, in June, to impose a further conditional release order rather than a period of detention, given what has happened in August, I really have not - - -

O'HARA, MS: Yes.

HIS HONOUR: - - - many options open to me.

O'HARA, MS: That's my understanding, your Honour. I would just respectfully ask the court to take into account - I do generally believe that under different circumstances, DEB would be before a magistrate, where their sentencing power would be limited to 12 months, and obviously, that reflects - or rather, aligns the mandatory period for a third strike burglary matter.

HIS HONOUR: I've got to sentence him, don't I, to a period of not less than 12 months?

O'HARA, MS: Respectfully, your Honour, I would suggest that having spoken to DEB, he is fully aware of the situation, and that is something that's very much on the

cards today, given all the circumstances and the offending and the previous orders - - -

HIS HONOUR: Yes.

O'HARA, MS: - - - and the breaches of those orders.

HIS HONOUR: Yes. Sorry. I've interrupted what you - - -

O'HARA, MS: No, your Honour.

HIS HONOUR: - - - were going to say.

O'HARA, MS: I don't really have anything much further to say. It has been a long journey to this point, and I think DEB really reached the finish line, and he just felt that it really has been quite difficult.

HIS HONOUR: Yes.

O'HARA, MS: And the cannabis use has really got in the way, and he does need some help, and he fully understands the offending and where he is at the moment, your Honour. Thank you.

HIS HONOUR: Thank you, Ms O'Hara. Ms Johnston.

JOHNSTON, MS: Thank you, your Honour. There were - the situation, as far as I see it, is the question is whether DEB should receive the minimum 12 months today, having regard to the third strike burglary, charge 618 of '15, which was committed on 5 August, or whether there needs to be an additional penalty taking the term to be beyond the 12 months, and in considering that, I would refer your Honour to the seriousness of the underlying offences which were subject to the intensive youth supervision order, which has been cancelled today.

I note that in relation to two of the burglaries, the complainants were home at the time. They are charges six - sorry - 567 and 571 of '14, and the complainant disturbed - came home and disturbed DEB. That's charge 35 of '15. Those underlying offences are also serious not just because of the contact with the complainants themselves by DEB, but also the nature of the property that was taken. Specifically, there was jewellery worth \$30,000 taken in burglary 569 of '14.

It was obviously precious to the complainants because it was stored in a safe - precious probably because of monetary value, but usually those types of items also hold

sentimentality to their owners. There were guns taken from two of the dwellings - charges 569 and 35 - 569 of '14 and 35 of '15. So factually, those matters are serious. I note that my learned colleague, Ms Cleary, conceded in the past that immediate detention was open, but perhaps not the only penalty, having regard to an opportunity to the Wirrpanda Foundation.

I note that since being placed on the order, there has been a breach lodged by Youth Justice for non-compliance, and by way of his plea today to the third strike burglary, 618 of '15, he also faces breach by re-offending, although I note the difficulty with the fact that both the youth conditional release order and IYSO have been cancelled. So in having - also in determining penalty, your Honour would take account of the fact that there is a need for personal deterrence, having regard to the matters on DEB's record.

Also the need for general deterrence for these types of offences, particularly home burglaries. I note that a number of them your Honour is considering today were committed in the wee hours of the morning when people are usually home. They are serious because there is the risk that the offender will come into contact with complainants in their own home, and it's not only an invasion of their sense of safety, but also places both the complainant and the offender at considerable risk of harm in a threatened distressing circumstance of coming face to face with one another. I don't make any particular submissions on the term that your Honour might be minded to impose today. I don't make any particular - - -

HIS HONOUR: Yes.

JOHNSTON, MS: - - - submissions about the length, your Honour.

HIS HONOUR: Yes. Yes. Thank you.

JOHNSTON, MS: Thank you.

HIS HONOUR: Ms Hotker, was there anything you wished to add?

HOTKER, MS: I would like to confirm, for the court's consideration, DEB's current days in custody. So on the current detention management report, it does outline some days in relation to days spent prior to the intensive youth supervision order being imposed.

HIS HONOUR: Yes.

HOTKER, MS: Since that order was imposed, there are currently nine days in custody. Two of those days from 2 and 3 September this year were in Geraldton police custody. So any term of detention can be backdated to 2 September this year.

HIS HONOUR: Yes. Thank you. I'm going to just take a little bit of time to consider what I'm going to do, DEB. So I'm going to take about half an hour just to consider what Ms O'Hara has said and what the prosecutor has said and read some things again. So give me about half an hour and we will come back here and I will speak to you then. We will adjourn for half an hour or so.

(Short adjournment)

HIS HONOUR: Ms Johnston, can I just turn to you again, please, to seek some clarification from you regarding how the Young Offender's Act works. In relation to all of the Geraldton matters for which DEB was sentenced in the Geraldton Children's Court in February this year, can I impose a sentence in relation to all of those matters as a global sentence?

JOHNSTON, MS: Your Honour, I think that the matters need separate sentences and depending on what the disposition is, it may be that there's concurrency that can be ordered in relation to - - -

HIS HONOUR: Yes.

JOHNSTON, MS: - - - terms, if terms are going to be imposed.

HIS HONOUR: So still need to deal with each matter individually, and then deal with issues of concurrency, cumulation and totality in the normal way.

JOHNSTON, MS: I believe that that's the way the matter needs to be disposed of.

HIS HONOUR: Yes. There is no ability to simply impose a global penalty in relation to all of those matters and deal with them in a global way.

JOHNSTON, MS: I don't believe there is, your Honour.

HIS HONOUR: Yes. Thank you for that. Ms O'Hara, do you wish to - - -

O'HARA, MS: No, your Honour.

HIS HONOUR: - - - respond to that. Thank you. DEB, just stay seated. I'm going to spend a little bit of time talking to you. I know you have been in court before so you probably have a bit of an idea of what I need to do and what I'm going to say to you. I think what is the thing that concerns me most, and I just want to talk to you about it a little bit, is you have been dealt with by the court on three or four occasions now. You came before the Geraldton court in February in relation to all of those burglaries.

You then committed some more offences and another burglary and you were dealt with in this court by the Magistrate in June, and she wanted you to start the Wirrpanda Foundation program, and then that didn't work out and your lawyer, Ms O'Hara has explained some of the reasons why that didn't work out, but you then - you have committed another burglary again in August of this year. Can you see why that's quite serious, that you keep doing the same sort of things all over again, even though you keep coming before the courts?

Do you understand why the more you do this; the more serious the court has to deal with you? Yes? And when you were dealt with in Magistrates Court, I don't know what the Magistrate said to you, but I'm sure she said to you that this is quite serious offending and I'm sure she would have explained to you why it's serious offending, and then I have read what Crawford M said to you in June and she certainly expressed concern about the offence involving the older lady, where you stole the older lady's purse and through your lawyer, you said you were sorry for that and you felt embarrassed about all of that, and I think because of all of that, Crawford M was prepared to give you another go, and there was some hope.

Everybody was hopeful that you would be able to get onto the Wirrpanda program with the support of your sisters and see whether you could get onto the straight and narrow and stop your cannabis use, but you haven't been able to do that. Are you able to tell me any reasons why you haven't been able to do that? No? Your lawyer, Ms O'Hara, tells me that cannabis use has really taken over your life. Is that right? Is there any chance you can stop using cannabis? Because do you understand, if you keep using cannabis, you keep breaking into houses, people in my position have to deal with you in stronger terms each time, and we don't want to do that if we can avoid it.

We don't want to put you into detention if there's any other way we can deal with you. You're only a young bloke. You have got a lot of life ahead of you and if we can stop you using cannabis and stop you breaking into houses, that's what we want to do, but nothing the courts have done so far seem to have worked, because you keep breaking into houses. So easy for me to say, perhaps, but you need to really try and stop using cannabis.

I know you don't get a lot of support from your family and that has been one of the difficulties you have had, but you need to start giving some thought to that, because it has now got to the stage where, and I will explain this in a bit more detail in a moment, that my hands are tied to some extent. I have to sentence you to a term of detention of not less than 12 months. I don't have any other option about that, and that's because you have committed another house burglary for the third time, and I think your lawyer has probably spoken to you about that, has she? Yes.

So we don't want to do that but the law says I have to do that, so that's the position we're in and because you're such a young bloke, I would prefer not to do it, but I don't have much option but to do that. So I'm going to have to send you to a term of imprisonment. Just try and understand why, though, you keep breaking into houses. Every time you're dealt with, the courts give you a chance to stop doing it, but you haven't been able to do it, and your lawyer told me today that cannabis has taken over your life and you don't know what to do. So - is that right? Is that what - - -

DEB: Yes.

HIS HONOUR: - - - has happened? So - yes, and obviously you need to try and stop using the cannabis, and so the period of detention that I'm going to order in a moment, I'm hoping that during that time, that will help you stop using cannabis, because while you're in detention, some people there will be trying to help you because once you are released from detention, you're going to be released under some supervision. So once you're released from detention, people will continue to supervise you and try and get you back onto the straight and narrow, you know?

Try and help you get off the cannabis, but you're going to have to help yourself to some extent. People can't do it all for you. You have to try and deal with it and - because you're such a young bloke, you really do need to try a lot harder than you're doing, because it's not much of a way to spend your life, is it, if you keep doing

this, if you keep coming back to court all of the time. Not a lot of fun, and because you're now going to have to go to detention for a period of time, that's only going to increase if you keep offending. You're 17 and a bit, now. You're 17 in May, is that right?

DEB: 18 in May.

HIS HONOUR: You're 18 in - - -

DEB: In May.

HIS HONOUR: Did you turn - you just turned 17, I think, this year, so - yes. You're 18 next May, so you have just gone 17. So you will be 18 in May next year, and once you're an adult, if you keep offending in this way, the courts are going to have to deal with you far more seriously than if you're under 18. So you just need to understand that and try and stop it. I realise it's hard because you have not got a lot of family support over the years and you don't have, you know, anybody strong that you can go to and that person can help you.

You don't have a male in the family or a strong male friend that's able to look after you, but I don't know. Your sisters have tried to help you, but it seems that they have given up for you, at least at this point in time, but hopefully in a bit of time that they will help you again after you get released from detention. You just do need to try and stop using cannabis. So I'm hoping that the time you're going to spend in detention will help you do that.

So I'm just going to make a few notes and read a few things to you, and - now, I have got to deal with you in relation to all of those offences you committed in 2014 that the Geraldton Magistrate sentenced you for in February this year, and there is a number of house burglaries there and you have heard the prosecutor say to me today that there was some serious circumstances in which that offending was committed, because you were breaking into houses in the very early hours of the morning when people were at home asleep.

On one occasion you stole, I think, it's \$30,000 in jewellery. Another occasion, you stole guns and ammunition and you have heard me speak to your lawyer about my concern about that, because nobody has been able to find the guns. You don't know what has happened to the guns because some adults come along and took them. Is that right?

DEB: Yes.

HIS HONOUR: Yes. So you don't know what happened to them and your lawyer said you didn't know there were guns there, they just - you just came across them and took them when you saw them. Is that the case?

DEB: Yes.

HIS HONOUR: Yes. Because you would understand, I'm sure, that it's a worry if people break into houses, steal guns and particularly young blokes like you. Then you're wandering around in the community with guns and ammunition. It's a bit of a worry. So I'm pretty concerned about that, because that shows you how serious that offending is, and I mean, every time you break into somebody's house, particularly at night when they're asleep, it frightens them.

It's traumatic for people when the house has been broken into, even if you don't take anything, it's still frightens people if you come into their houses and you wake them up and they see you in there. It's very worrying to people to - that it frightens them. Then if you do steal things, again, that is very distressing for people when they lose their property. Particularly jewellery and things like that, because they often have sentimental value.

Do you understand when I say sentimental value, what I mean by that? So if you have given - you have got something that you have had in your family for a long period of time and somebody came and took that from you, you would be pretty upset about that, wouldn't you? So you can understand if you take things like that from people's homes it's pretty upsetting to them, particularly if they never get it back. So it's not only how valuable it is in money terms, but it's valuable in terms of it's - it's something that people are very close to and that's upsetting.

Just being in people's houses, it frightens people. It causes them stress. It worries them. Then, in relation to the old lady, the elderly lady, and you stole her purse. That would have been obviously very frightening to her and distressing to her, and then you used her credit card and she had to cancel her credit card and start all over again, and that takes an older lady a lot of time to get over, and then on this last occasion in August this year when you break into another house and there's an old lady at that house.

She was 83. Even though you didn't see her and you didn't know she was an old lady, it's still, you can understand it would be very worrying to her, very frightening, because she is so old and if she gets over it - it would her a long time to get over that because it just frightens her. So that's why the courts regard these offences so, so seriously, because the maximum punishment that the courts can impose is 20 years in prison. So it just shows you how seriously the government and the courts regard breaking into people's houses.

Now, I'm not going to sentence you to 20 years imprisonment, so you don't need to worry about that, but I simply raise that with you just so you can understand how seriously the courts regard it, and Parliament regards it, and of course, if you keep doing it, the penalties are going to keep increasing and that's how serious it is. So you will keep getting further time in detention, and with that, the old lady, of course, when you broke into her house in August, she had a duress alarm, so she pressed the duress alarm which just indicates how frightening it must be for her, and, of course, the police then came and I think you were arrested not long after that. And then there's the trespass offence when you were found in the rear yard of a house, so you were probably looking to break into another house at that time.

I do take into account, DEB, that you have pleaded guilty to all of these offences at an early opportunity and I allow you the maximum discount that I am able to give you for your pleas of guilty. By pleading guilty, it does indicate - even though you keep repeating this offending - it does indicate that you do accept some responsibility for your offending. It shows that to some extent you understand that you've done the wrong thing and you accept that you've done the wrong thing, but what's concerning to me is even though you do accept you've done the wrong thing, you keep coming back and doing it again.

And in the circumstances before me now, one of the most serious aspects of your offending is the courts have dealt with you. You've been before the Magistrates Court in Geraldton, you've then been to the Magistrates Court here, and then the courts give you another chance but you continue to break the law again, and that's what's a real concern. That's what's a real worry. So the courts are trying to help you, but you're not helping yourself, and that's what you need to take into account.

I've read all that Magistrate Crawford said when she dealt with you in June this year. I'm not going to repeat what she said. She touched upon your family background and she referred to - you've had some pretty traumatic issues in your family and you've suffered some fairly significant disadvantages. I'm not going to repeat all of that. I acknowledge all of that and, yes, you've not had a lot of support over the period of time but it did seem in more recent times that both your younger sister, G, and your older sister - remind me who's - what's your older sister's name?

DEB: A.

HIS HONOUR: A. That's right. Thanks - that they were prepared to provide some support to you but - and because at one stage you were living with both G here in Perth and with A up north. And I think you were living with A so you could look at getting onto the Wirrpanda program but that didn't work out, and in a report that has been given to me today, it's noted that the lady who spoke to A said that A said that you're no longer welcome to live with her and her family because of what happened when you were living with her.

And your lawyer today tells me what the concerns were. You kept using cannabis, you kept associating with people who were taking drugs as well, and she didn't want you around her house and her family when you were continuing to use cannabis and dealing with other people who were taking drugs, so she's no longer prepared to have you at her home, at least at this point in time. She might be in the future. I don't know. And then the youth justice lady tried to speak to G to see whether G was prepared to take you in here in Perth but they weren't able to contact G.

And I think G was actually here in court on the last occasion supporting you when the magistrate dealt with you but they haven't been able to speak to G. I've also read a report of - you remember you saw a psychologist when you were in detention before? That's - you probably can't remember her name - that was Ms Oliveri. She did an assessment of you and that report was before the Magistrate Crawford when she dealt with you in June.

And that report notes that you have reduced learning. It impacts upon your ability to think properly and properly make judgments about your behaviour, and I'm sure, even though she doesn't necessarily say this, I'm sure the cannabis use doesn't help your clear thinking at all. I

mean, cannabis use can impact upon people's ability to think clearly. It can cause brain damage, and if you continue to use cannabis, I'm sure it's not going to be any good for your long-term health, so you just need to think about that.

But Ms Oliveri talks about the impact of your background and the difficulties you have, and particularly that's made worse because you don't have any family support to help you, to keep you on the straight and narrow. And so that makes it more difficult for you to understand what's right and what's wrong. But I think you've got a pretty good idea that what you've been doing is wrong and you need to stop doing that. Am I right about that?

DEB: Yes.

HIS HONOUR: Okay. Now, I've read the reports and your lawyer, Ms O'Hara, today has spoken to me and told me what has happened since you were initially dealt with in the Geraldton Magistrates Court. And I'm not going to repeat everything she says, but she has outlined some steps that have been taken to support you. At one stage, you were up in Broome with an aunty who was trying to help you but unfortunately that didn't work out because her husband had died and she was still grieving for the loss of her husband and wasn't able to provide you with the support that you thought that you were going to get, and so that created some problems.

There was a hope at one stage you would go to a stockman's course but that didn't work out because you were in a classroom for a while and that's not really what you wanted to do. And, again, your aunty wasn't there to help you keep focussing and so that didn't work out. You then went to Dampier for a period of time but the program that you had hoped to start was no longer operating at that point in time so you weren't able to start that program.

And because of the difficulties you have with clear thinking left you really unable to know what to do. I also take into account that at one stage there was some talk about you living in the Barrel Well community with your mum, and I know a little bit about the Barrel Well community and so on, and it is an isolated community and I can perhaps understand why you didn't want to live there, but I do understand that it's a reasonably supportive community of close family members.

I think it is run by the Ballard family and there's a fair few people, as I understand it, that are out there so

- and that's perhaps something for you to think about later in the future. But that's a matter for you. You've got to feel comfortable about that. And I note that unfortunately the Wirrpanda program, which might have helped you a little bit, didn't really get going partly because you were getting involved in continuous cannabis use and then you were associating with these other people who weren't really helping you at all.

They weren't good role models. And at one stage I think you then started associating with three older males. Unfortunately they were all drug users and that didn't help you at all. They're not the sort of people that you should be associating with. You need to associate with people who don't take drugs - that can keep you off the drugs. Again, I know it's easy for me to say this, perhaps. It's hard for you to deal with it all, but you really do need to try and deal with these matters.

I also note that, certainly in recent times, you haven't had much time at school and that hasn't worked out, and you had pretty poor schooling, and you can read and write a little bit but with some difficulties, and that creates problems as well. Now, I do take into account that you are a - still a young bloke. You've only just turned 17. I take into account, DEB, that in deciding what the penalty to be imposed upon you, perhaps the most important thing I need to take into account is your rehabilitation.

That means what we want to try and do is get you back onto the straight and narrow, stop you from continuing to break the law and try and put some plans in place for you to look forward to a good future and to try and stop you breaking the law. So that's a very important consideration for me to consider and for courts consider when they're dealing with you. And it's really as a last resort that I've got to send you to detention, and if I do, as I'm required to do, decide that you have to spend a period of time in detention, it has got to be for the shortest period of time.

I also need to take into account that any penalty I impose upon you teaches you that you cannot keep offending in the same way because if you continue to offend in the same way, you continue - you will be sentenced to stricter and stricter penalties. I also need to send a message to other young people in the community who might be in a similar position to you that they cannot offend in the same way as you have offended. In other words, on some of these occasions you're breaking into houses with other people and so I need to send a message not only to you but to other

people who might be breaking into houses that they can't do that either because if they do it, they're going to be penalised as well.

So that's one of the messages I need to send, and I also need to punish you for the offences that you have committed. In your circumstances, because you have repeatedly broken into houses - you have repeatedly now been convicted of what is called aggravated burglary - I need to take into account the protection of the community. That's an important sentencing consideration in your case. I need to protect the community from you continuing to break into people's houses, so that's an important matter I need to take into account.

Despite all those things, rehabilitation is still a very important focus but it is balanced by all of those other matters that I've just spoken to you about. The view I've taken is that your offending is too serious to allow any other penalty other than a term of detention to be imposed, and as I've explained to you, because you've committed three different aggravated burglaries over three different periods of time, I am required to impose a term of detention of not less than 12 months anyway.

So what I'm going to do is this, DEB: in respect of all of the matters dealt with by the magistrate in Geraldton, and these are the various aggravated burglary charges dealt with at that stage, and you will remember the magistrate sentenced you to a youth conditional release order for 18 months - sorry, for eight months in relation to each of those, so what I'm going to do is sentence you to a term of detention of eight months in relation to each of those.

So that's imposing the penalty of detention on you that the magistrate would have imposed if you would have breached those. So in relation to each of the Geraldton charges 567, 569 - I've got to read these numbers out so the lawyers follow what I'm doing and I will speak to them in case I've got it wrong in a moment - so 567, 569, 571, 573, 599 of 2014 - they're all Geraldton charge numbers - I sentence you to a period of detention of eight months.

In relation to Geraldton charge number 600 of 2014, which is stealing a motor vehicle, I sentence you to three months detention. Now I'm going to deal with a Broome matter, and that's 130 of 2015. This is the time when you stole the purse from the older lady. That's Broome 130 of 2015. I sentence you to a term of six months detention. I then come to the Geraldton charge 35 of 2015, and this is

the offence which happened, I think, from memory, May this year. I sentence you to a term of 10 months detention.

I then come to deal with the offences committed by you in August this year. They're the three offences that you pleaded guilty today before me. And dealing with each of those, 617 of 2015, that's the breach of the bail undertaking. You didn't turn up with court as you were required to do. I impose no penalty.

In relation to the aggravated burglary - this is when you broke into that house in the early hours of the morning of the older lady, that's 618 of 2015 - I sentence you to a period of detention of 15 months. And then in relation to the trespass charge - that is 620 of 2015 - I sentence you to two months period of detention.

Now, DEB, what I now have to do is consider - having regard to all of the offending you've done over all of that period of time - how I should fairly deal with you, because if I add up each of those periods of detention, that's going to be a long period of time and that's not fair, and so I'm not going to do that.

What I'm going to do is, in my view, the overall period of detention you need to serve is 15 months in detention. So what I'm going to do is I'm going to make all of the periods of detention to be served at the same time as each other. That's called concurrently. So they don't add up. It's not one on top of each other. You're spending them all at the same period of time and that's called concurrently. So the overall period in detention is a period of 15 months.

I'm also required, DEB, to determine a time that you can be released, and I think I spoke to you earlier about, once you've served a period in detention you will be released. It's called a supervised release order. And I order that you serve a period of half of that time, so seven and a half months, in detention and after seven and a half months you will be eligible to be released under a supervised release order.

I'm going to speak to the lawyers in a moment about precisely how that will work, just to make sure I've got it right, but after seven and a half months you will be released under a supervised release order. And there will be conditions which apply to that, so when you come out of detention what we want to try and achieve is that you will

have somewhere to go and live that will be stable, somebody there who will be able to support you.

I don't know whether that's going to be your sisters or somebody else, but in the next seven and a half months hopefully somebody will be able - well, hopefully somebody will be able to try and put in place a plan that when you come out of detention you've got some stable accommodation and somebody to keep an eye on you for a period of time.

And the whole idea of all of this, when you're in detention, is you stop using cannabis, and when you come out of detention you stop using cannabis as well, because as soon as you get back using cannabis that seems to me to start all of these further offending. Okay? Now, I'm going to speak to your lawyers and if you want to ask me any questions I will come back to you in a moment. So far, is there anything you want to ask me?

DEB: No.

HIS HONOUR: Yes. Ms O'Hara.

O'HARA, MS: Yes, your Honour.

HIS HONOUR: Is there anything I need to correct or clarify, is there anything I have not explained properly or
- - -

O'HARA, MS: No. I don't believe so, your Honour. As I understand it the - at the Banksia Hill Detention Centre when it is the halfway point through the - - -

HIS HONOUR: Yes.

O'HARA, MS: - - - term of detention, obviously there will be moves to have DEB appear before the Supervised Release Board - - -

HIS HONOUR: Yes.

O'HARA, MS: Review Board, and the matter will be taken from there, and they will look into where DEB can perhaps have a supervised release order to, and what the supports are, and that will occur - as I understand it, that will start to be looked at leading up to the halfway point of the sentence.

HIS HONOUR: Yes. And they will take into account of the recommendations which have been made to date in the various

reports, and the Youth Justice reports, and Ms Oliveri's reports. They will take all of that into account.

O'HARA, MS: Yes, your Honour.

HIS HONOUR: Yes.

O'HARA, MS: Thank you.

HIS HONOUR: Now, before I come to Ms Johnston, Ms Hotker, is there anything I need to correct from your point of view?

HOTKER, MS: No. Is there any backdating in relation to DEB's - - -

HIS HONOUR: Yes. Sorry. I should say that. Thank you for pointing that out to me. The period of detention will be backdated to 2 September.

HOTKER, MS: Thank you, your Honour. There's nothing further.

HIS HONOUR: Yes. Ms Johnston, do I need to clarify - - -

JOHNSTON, MS: Your Honour, I have nothing further to raise.

HIS HONOUR: - - - or correct anything?

JOHNSTON, MS: No, your Honour.

HIS HONOUR: No. Okay. That deals with everything, DEB. Is there anything that you want to ask me? You understand what I've explained to you?

DEB: Yes.

HIS HONOUR: Okay. Good. That finishes it and we will now adjourn the court.

AT 12.56 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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