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THE CHILDREN'S COURT OF

WESTERN AUSTRALIA

BU 318 of 2014
BU 623-629 of 2013
BS 142-143 of 2013
BS 170-180 of 2013
BS 183-184 of 2013

THE STATE OF WESTERN AUSTRALIA

and

HDS

JUDGE D. REYNOLDS

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 7 NOVEMBER 2014, AT 12.01 PM

MR S. STOCKS represented the State of Western Australia.

MR I. HOPE appeared for the accused.

MS P. HOTKER appeared for Youth Justice Services.

ASSOCIATE: Calling the matter of HDS.

HIS HONOUR: You can leave the bar table, (indistinct).

ASSOCIATE: Hakea, could we please have HDS brought in.

HIS HONOUR: HDS, it's the judge. I can see you on the monitor there. Can you see and hear me?

HDS: Yes, your Honour.

HIS HONOUR: Okay, thanks for that. I thought I saw Mr Hope a moment ago. Just bear with me. He might be walking back in in a moment.

I. HOPE, MR: Your Honour, I apologise. Another matter is being called on soon in the other court, and, I apologise, it's two commitments occurring at once.

HIS HONOUR: All right. Well, I think everyone has had their say, and it's now for me to give some reason and express the sentences that I think are appropriate.

HOPE, MR: Yes.

HIS HONOUR: All right. First of all, HDS, thanks for your patience. You've been on the monitor there on a number of occasions now. You were sentenced on 29 August this year, and then there was a resentence on 1 September.

HOPE, MR: Sorry, your Honour.

HIS HONOUR: Sorry?

HOPE, MR: Please forgive the interruption. I've overlooked something. Just before I came into court about 20 minutes ago, my client's mother approached me and handed a letter which my learned friend actually hasn't seen, I'm sorry. May I have it shown to the court?

HIS HONOUR: Just bear with me, please, HDS. The prosecutor is just reading this letter from your mum.

HDS: Yes.

HIS HONOUR: I'm just looking at the back of the courtroom. Your mum is not in the back of the courtroom, in case you were wondering, HDS.

STOCKS, MR: There's nothing that arises from the State's perspective, your Honour.

HIS HONOUR: I will just have a read of this, HDS, if you just - if you can just bear with me for a moment.

HDS: Yes, your Honour.

HIS HONOUR: All right. Well, essentially what your mum is saying is that she wants me to take into account that you were addicted to speed at the time that you committed these offences. Well, there has already been - it's not a criticism of your mum, but there has already been mention that at the time you were using methylamphetamines, so I understand that. There's also mention of the relationship breakdown and you losing contact with your son while you've been in custody, and I'm aware of - - -

HDS: Yes, your Honour.

HIS HONOUR: He's, what, about - I think I've read he's about, what, two and a half or thereabouts now; is that right?

HDS: Yes, your Honour.

HIS HONOUR: And you've lost your aunty. That's your mum's sister. So that's extremely sad. And she's talking about you, when you do get out, living with her. She's at a place in Gosnells, I think, at the moment; is that as you understand it?

HDS: Yes, your Honour.

HIS HONOUR: Yes, okay. So that's essentially what your mum is telling me. And you've heard on the last occasion Mr Hope properly spent some time talking about what your hopes are, that you do want to get out and start leading a productive life. The psychological report spoke about you not having much empathy for victims and not having any goals in life. Mr Hope tells me that you do have some hopes and aspirations to get out, and you've been doing some courses whilst you've been in custody that can help you maybe get some work when you get out. You've heard all that - - -

HDS: Yes, your Honour.

HIS HONOUR: - - - mentioned on the last occasion. Just in relation to that, HDS, can I just mention to you that when Mr Hope spoke with you, that was a different time than

when the psychologist spoke with you. So they can both actually have accurate assessments of how you were at the time they each spoke with you, and it might not have been the same. It may not have come across to each of them exactly the same. That's what happens when you talk to two different people at two different times. That can happen.

HDS: Yes. Yes, your Honour.

HIS HONOUR: So it seems to me that you were probably feeling pretty low and down when you spoke with the psychologist, and maybe not so much so when you spoke with Mr Hope.

HDS: Yes.

HIS HONOUR: Does that make sense? But - - -

HDS: Yes, your Honour.

HIS HONOUR: But looking at it, I do hope that when you are released - and even before then - that you've sorted out in your own mind that you want to leave all of this behaviour behind you and not repeat it. And obviously an important part of all of that is staying off substances.

HDS: Yes, your Honour.

HIS HONOUR: Now, I am going to produce some written reasons, HDS. I won't go over all of them today. A lot of it is probably stuff that you might be interested in, but not necessarily so, because essentially I don't want to be in a situation again where I'm having to resentence a young person, because it causes a lot of anxiety for everybody. And what has happened here is that you were sentenced to detention. That wasn't open, because you were over 18 at the time.

And then the detention was changed to 37 days imprisonment and 30 days imprisonment. The reason for that seems to be that magistrates of the court have limited power, and they can't impose sentences longer than six months imprisonment. So by taking into account the time that you had been in custody, the sentences could be less than six months, in fact, 37 days and 30 days respectively for some of these offences.

And I've just had to make the point, HDS - and I'm sad that it's your case that has been the vehicle for me to have to do this - but I don't think taking time into account should be used to give people jurisdiction, like a

magistrate, jurisdiction to deal with something in a certain way. That would defeat the purpose of the legislation. The legislation with limited powers is there, so the president of the court gets the most serious matters that come before the court. And when the president of the court gets the most serious matters that are to come before the court, the president has got greater sentencing powers.

And generally, it would be accurate to say that the legislature wants the most serious kinds of offences dealt with by someone who has got unlimited powers - well, limited in the sense of what the statutory maximums are, but you're not limited like a magistrate would. So it wants the most serious offences dealt with in a way that they're dealt with having regard to what the statutory maximum penalties are. Does that all make sense to you?

HDS: Yes.

HIS HONOUR: Yes. So, and the idea of 37 days and 30 days - and I've mentioned this in the reasons that I will give out next week - when you look at the offences and then you look at 37 days and 30 days, reasonable-minded people could be excused for thinking, well, the court doesn't think those really serious offences are really serious. I don't want people to think that.

For aggravated burglary on a dwelling and aggravated armed robbery and people being assaulted in their house, those sort of things are extremely serious, and to look at a record that says 37 days or 30 days for things of that sort doesn't properly reflect the seriousness of them and the fact that the court does regard those sorts of offences as particularly serious. So that's why I've come in and I'm changing the sentences. And there's another thing about it, too, that I've mentioned - and you can read this next week sometime, HDS, is that for all of these offences that arose out of that incident on 8 October, there are a multiple number of offences.

In particular, of course, we had the aggravated burglary on the dwelling, the unlawful assault causing bodily harm in circumstances of aggravation; there was two of those. There's two aggravated armed robberies, threat to kill, some common assaults and stealing. When everything was made concurrent, it didn't properly reflect the totality of the criminality of that incident, because there are a number of offences arising out of the incident.

For example, there's the burglary itself, then there's the unlawful assault against KM, of which you

weren't a party - weren't a principal offender, but you were a party. And then there's the unlawful assault, bodily harm in circumstances of aggravation against CR, of which you were a principal, and that involved you using a baseball bat. So there's a person in the home, he's entitled to feel safe, and that sort of thing is happening. And then that assault against KM, that happened in there as well.

And then, robberies, the aggravated armed robberies. So by dealing with things concurrently, it didn't, on my view, properly reflect the totality of the offending throughout the course of that incident. So that's another reason why I have chosen to deal with these matters afresh, so in the end people can look at the sentences and get a proper understanding of the seriousness of them and a proper understanding of the totality of your criminality.

But of course, HDS, I'm taking into account other factors, matters personal to you and I'm very mindful of your own personal circumstances and I will mention those in a moment. So in the end, I also wanted to make the point that for someone in your situation, HDS, because you were on a supervised release order at the time. Remember, you were given the one year detention for the aggravated burglary on the dwelling, that was committed in Broadwater. You got a year's detention for that. That was backdated to commence from 17 October. So you had been released on a supervised release order I think sometime in April, hadn't you? So - - -

HDS: Something like that.

HIS HONOUR: Yes. So it was towards the end of the supervised release order that you committed these offences on 8 October. And the order - the supervised release order was in relation to an aggravated burglary on a dwelling. You were a third striker when you did that and I know you weren't a third striker when you did this one on 8 October because one of the earlier strikes had fallen away because of the passing of time. But there you were on a supervised release order committing another dwelling burglary.

And you went there in numbers too and it seems as though you went there to inflict some personal violence. That was the idea of you going there. You knew the people in the house or you were with someone that knew people in the house and the purpose for going there was for trouble, physical trouble. So all of those things make me say that

there needed to be a great deal of weight for specific - that's personal deterrence - and also general deterrence.

Now, having said all of that, there are also those other matters that had to be dealt with and her Honour dealt with those under the Young Offenders Act by not imposing any further punishment and, with respect, that wasn't open to her because you're over 18 and so you had to be sentenced under the Sentencing Act. And that provision, section 67 in the Young Offenders Act, just didn't apply. And what her Honour did there was she said, on all of those matters that she used section 67, well, you have been in custody for a long time and so I'm taking that into account and not imposing any further punishment on those matters that she did that for.

So that wasn't open to her. Can I just, having spoken about that section, HDS, just mention to you and others that in the Sentencing Act, there is a section in the Sentencing Act at section 46 that says that you can impose no further, or no sentence. That section is different to what section 67 of the Young Offenders Act is about because for the court to impose no sentence under the Sentencing Act - that's for someone who is over 18 - you would have to be satisfied that the circumstances of the offence were trivial or technical and there was nothing trivial or technical about the offences that you committed that were dealt with in the way that I have spoken about by her Honour.

And anyway, you also had to have regard to your own personal antecedents and I don't think your personal antecedents, looking at your record, gave you the necessary favour that would have warranted any sentence of - no sentence under section 46 of the Sentencing Act. So moving ahead, can I also make the observation that her Honour didn't actually hear the facts on all of those matters beyond the matters that arose out of that incident on 8 October.

It seems that she took the view, well, she was going to impose a substantial sentence for those matters arising from 8 October, that that would be enough, without actually hearing what the facts were on those other matters. I have heard the facts on those other matters. There are two in particular that I should comment on. One is an assault with intent to prevent an arrest and the other is a threat to injure and you might recall, HDS, that those offences arose out of some shoplifting that you did at the Bunbury Centre Point Shopping Centre and then someone attempted to

stop you from you running away and you threatened that person with a pair of scissors.

And then, you have gone to ground and that person received some minor injuries to his face and arms as a result of the scissors. And then, you were arrested by the police and then you give him a mouthful, threatening to kill him. You know where he lives and you're threatening to kill. Well, that's serious and unfortunately her Honour didn't get to hear about those facts and they needed to be - those offences needed to be dealt with in a way other than section 67 and other than section 46 in the Sentencing Act and they needed to be sentenced in a way that reflected their objective seriousness.

So having said all of that, can I just go back to those matters from 8 October and mention that you failed to be sentenced for those matters, HDS, on the basis that they had to go to trial. So you pleaded not guilty and that's your right. They went to trial but you didn't put yourself in a position to get a discount for a plea of guilty in relation to those matters. You're 18 years and five months of age now. At the time that you committed those offences, last October, you were 17 years and four months of age so you're towards the upper end of the age range for people being dealt with by this court. At the time that you committed those offences in October last year, your record provided very minimal mitigation.

As I have said, you were on a supervised release order at the time for the third strike burglary. That is the case that there's no aggravated armed robbery or assault occasioning bodily harm on your record so that's why I give you some credit but expressed it to be minimal. You have been in custody now for nearly 12 months, haven't you, so that's a very long time. And just on that, I have already mentioned it but I will just repeat it again, you know that this review was at my motion, my instigation, and you might have been wondering, well, why did the judge get involved in this.

Well, the reason why I got involved was because there are a number of other matters, HDS, that I had to deal with young people that had been in custody for what I thought was an exceptionally long time. I was concerned that there might be some other young people in custody that hadn't had their matters sorted out and so I asked for some information on whether or not there were other young people out at Banksia that had been there for longer than six months because if there were, I wanted to know about it, to

see if I could somehow properly hasten up their cases so they weren't just in Banksia on remand.

And your cases came to light and so that's why I checked in to see what was happening. And just around the same time, then, you were sentenced and so that's how I came to know about them. And then, it was obvious, from looking at what had happened, that there had been some error so I needed to fix them up. So that's how I came to know about them. Can I also just mention to you, HDS, that I'm very mindful of your personal circumstances.

I won't go over them in a great amount of detail. I know you were born in Pinjarra, your parents separated when you were very young, you have lacked positive role models in your life and that's disappointing. Your education has been disrupted. I know that - and as I have mentioned - you have had little contact with your son. You have had serious substance abuse issues and they go back from when you were a very young teenager with cannabis and then obviously methylamphetamine which became a very serious problem and it was at about the time and leading up to when you committed those offences in October last year.

And I'm also mindful that now that you're over 18, custody needs to be in an adult prison and you have spent some of that time, since the end of August, in an adult prison. So putting everything together, HDS, I have decided that the following sentences are appropriate on all of these matters. Can I just, firstly, deal with the matters that arose out of that incident on 8 October at Glen Iris and I will just go through those. Firstly, 170, that's the aggravated burglary and committing the offence in there and that was the offence of aggravated assault occasioning bodily harm to KM; on that, there's 16 months immediate imprisonment.

In relation to the next charge, 171, that's the unlawful assault doing bodily harm in circumstances of aggravation, that's the offence against KM of which you were found guilty as a party; there's six months imprisonment. For the offence 172, that's the unlawful assault occasioning bodily harm in circumstances of aggravation against CR. On that you were a principal, that's the one where you used the baseball bat to hit him to the face and the arms; there's six months immediate imprisonment.

173, 174, the two aggravated armed robberies, one against CR and the other against JE, they happened inside the house; on each and both of those

18 months immediate imprisonment. For the threat to kill, three months immediate imprisonment. That was the threat against TR. The stealing, that was the helmet and goggles, the property of TR, that's 177, one month's imprisonment. For the two common assaults, one against TM and one against TR, three months immediate imprisonment. You were found guilty as a party on each and both of those I note.

For the damage to the property, that's the motorcycle of TR, one month's immediate imprisonment. Now, in relation to those matters, as I have said earlier, HDS, I don't think her Honour, with respect, dealt with the issue of totality properly. Looking at totality, I think the appropriate outcome is that the six months immediate imprisonment for the assault occasioning bodily harm in circumstances of aggravation against KMM, that six months, that's cumulative, to be served cumulatively with the 18 months on each and both of those aggravated armed robberies.

In all other respects, the sentences are to be served concurrently. So that makes a total of two years immediate imprisonment. And given that, I will mention that you're to be eligible for parole on those sentences. In relation to the other matters that amount to offences beyond that 8 October incident, and I will go on through those by referring to two in particular. And those two, 628 and 629, the assault with intent to prevent arrest and the threats to injure, on each and both of those, three months immediate imprisonment.

And then, on all of those other offences that were dealt with by her Honour by way of section 67. And there's 10 left and they amount to the stealing, that's the subject of 183; possession of stolen or unlawfully obtained property, that's 184; disobeying a summons, that's 623; possession of the paraphernalia on which there was a prohibited drug, that's 624; breach of bail, protective bail conditions, that's 625; stealings, 626 and 627; and then possession of stolen or unlawfully obtained property, that's 318.

There's 10 charges there. On each and every one of those there's a fine of \$100, so that totals \$1000. Those fines can be enforced under the Fines Enforcement Registry, so you will be required to give a statement of your assets and liabilities, and some payment arrangement can be made. And for totality, given that there's two years already, those two lots of three months imprisonment that I

mentioned for the assault with intent to prevent arrest, and the threats to injure, they're concurrent on each other and also concurrent with the other sentences that I've mentioned, with you being eligible for parole.

So the net effect of these sentences, HDS, is two years immediate imprisonment with you being eligible for parole, and the sentences can be backdated to commence - I think it's on 6 November last.

HOTKER, MS: 7 November last year.

HIS HONOUR: I think there was mention of the 7th, but the 6th was a day, I think, where he was in police custody.

HOPE, MR: Day of arrest.

HIS HONOUR: Yes. So you're eligibility date is upon us. And in relation to the other matters, there's the \$1000 in total by way of fines that you will need to make some arrangement through Fines Enforcement. I think that deals with everything. Is there something I've missed out?

STOCKS, MR: No, ,your Honour.

HIS HONOUR: All right. All right. Thank you for your patience, HDS. Thank you.

AT 12.33 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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