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THE CHILDREN'S COURT OF

WESTERN AUSTRALIA

THE STATE OF WESTERN AUSTRALIA

and

SW

QUAIL P

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 8 APRIL 2022, AT 2.50 PM

MS S. PURVIS represented the State of Western Australia.

MS E. GLEIM appeared for Youth Justice Services.

MS M. LOUW appeared for the Offender.

THIS PROCEEDING WAS CONDUCTED BY VIDEO CONFERENCE

JSO: Please be seated. Calling the State of Western Australia v SW. SW, is that your name?

OFFENDER: Yes.

JSO: Thank you.

HIS HONOUR: Ms Louw, you're appearing by video link for S.

LOUW, MS: May it please the court, I do.

HIS HONOUR: Ms Purvis, you're on the link as well, for the State.

PURVIS, MS: May it please the court.

HIS HONOUR: Right. Ms Gleim, you're for Youth Justice. Mr Zepeda, you are here for Education again. Thank you. Now, Ms Louw, is there anyone who is linking in for S today, or not?

LOUW, MS: I wasn't aware, your Honour. I haven't been informed that that's the case. No.

HIS HONOUR: All right. All right, S. Have you had any contact with your family while you've been in custody?

OFFENDER: No.

HIS HONOUR: Nothing? Anyone phone you from up north? Nothing?

OFFENDER: No. Just me.

HIS HONOUR: Is your mum still in Derby?

OFFENDER: Yes.

HIS HONOUR: Yes.

OFFENDER: (indistinct) on (indistinct)

HIS HONOUR: Just take your mask off when I'm speaking to you, S.

OFFENDER: Yes.

HIS HONOUR: Yes. So no one has phoned you? None of your family? Your sister?

OFFENDER: No.

HIS HONOUR: Anyone? No one?

OFFENDER: No.

HIS HONOUR: Okay. I will speak to you a bit later; all right, but I'm going to speak to the lawyers, now, first. Now, counsel, can I just go through where we're at. S came up before me on 25 March when I programmed the section 40 review until today. Now, since then I've received the additional materials I wanted. So can I just check we're all on the same page. I've got a Youth Justice update report. That's the 5th - sorry - 8 April. Education report, Mr Zepeda, which looks, really, like extracts from a lot of Education Department records that you've sent through.

ZEPEDA, MR: Yes, your Honour.

HIS HONOUR: That's dated 4 April, and there's also information in the Youth Justice report about the education position now. I already had the report of 17 March when we programmed it. Those materials which Ms Purvis suggested; the JJT dismissal report of 18 November, I've got that, as well as the JJT return report when there was no initial compliance. That's 30 June '21. Also now reviewed, which we didn't have on the last occasion, the sentencing transcript of Magistrate MacLean on 18 March. So everyone got those materials; Ms Purvis, Ms Louw?

LOUW, MS: Yes, your Honour.

HIS HONOUR: Ms Gleim, anything else - - -

PURVIS, MS: Yes, your Honour.

HIS HONOUR: - - - I'm supposed to have, or was that it?

GLEIM, MS: I think that's it, your Honour.

HIS HONOUR: Right. What I will do, then, Ms Louw, it's your application, so I will hear the submissions you want to make, and then I will hear from Ms Purvis. Yes, Ms Louw.

LOUW, MS: Your Honour, it is accepted that the offending is very serious. It is, however - S is, I suppose,

towards the upper age in age at 16 years of age. I think it's clear from the returned Juvenile Justice referrals that he did complete those. And so, essentially, would have come before the court as - with no prior convictions. It is - and I think it's referred to in the updated report, there has never been any offences where there has been a demonstration of violence.

And it's the case that Mr - well - sorry - S has now spent time in detention for the first time; the very first time. All the reports refer, I suppose, to difficulties with parental supervision involvement support with his upbringing. And when the offences were committed he was living with his older brother, which, although no doubt (indistinct) S (indistinct) that support, parental guidance. It seems that the current updated report, with the idea that he would (indistinct) on an order that his
- - -

HIS HONOUR: Sorry. You're just dropping - - -

LOUW, MS: - - - sister - - -

HIS HONOUR: You're just dropping out, Ms Louw. What was that?

LOUW, MS: That it seems perhaps a more appropriate option that has been explored would be for him to reside with his sister, LM, in M Community, which is outside of Derby, and it seems to be a very detailed report that has been provided about engaging him in vocational training and supporting him in the community. I suppose what it comes down to, your Honour, is, it would seem that Magistrate MacLean clearly reached the position that a term of detention was appropriate in this case but, having looked at the transcript again, it doesn't appear that he really turned his mind as to whether that could be served in the community with a Youth (indistinct) by ISO with detention.

There was a - I think this is a far more detailed report, the updated report, and perhaps provides a better solution. But what I would say is that, given his age, and the fact that he came before the court with no prior convictions, there was something other than a term of immediate detention that his Honour could have looked at. And so I suppose our position is that it is very serious, certainly the complainant was injured, and required stitches. I accept that perhaps the magistrate rejected the idea that it was opportunistic, but what S did

tell me is that he didn't go out intending to commit an armed robbery.

This was a knife that he had found before on the streets, and I suppose that sort of culture of carrying it around for protection (indistinct) on the streets, and kind of sort of (indistinct) a gang like lifestyle. Your Honour may have seen reference to the tattoo on him and the graffiti in the cell, BCB with the postcode of Derby, since he identifies himself as a Blood City Boy. But he says he was carrying this knife around not intending to do an armed robbery.

Certainly, and I accept what the prosecution will say, that he seemed to be - he walked past and returned again, that it will show more premeditation than taking that opportunity at that time. But he says that when he asked for water he did see the phone, and then he became fixated on getting the phone, which, of course, resulted, unfortunately, in the complainant being cut, which was a foreseeable consequence of him holding up the knife. But, really, that his motivation, his sole motivation, was, it is that (indistinct) And, so, it's still my submission that he didn't go out intentionally to try and hurt someone, but that was the end result.

So what I would say, your Honour, is, if your Honour, having considered everything, perhaps did accept that a term of detention was warranted, that, given the report to hand, the time spent in custody, that your Honour could look at allowing S to complete that in the community. I will also point out that he did plead guilty. I think it was accepted at the first reasonable opportunity he came clean about what he had done. He put his hand up and he did plead guilty, after having spent a little bit of time in detention, but I would submit that at the first reasonable opportunity with counsel he did enter his pleas of guilty, and that is a demonstration that he has taken responsibility for his actions.

HIS HONOUR: Thank you, Ms Louw. Yes, Ms Purvis.

PURVIS, MS: So just in relation - can I confirm that the court does have the brief that the State has filed in relation to this matter?

HIS HONOUR: Let me have a look. 7 April 2002, the brief. Is there anything you wanted to take me to in the brief, Ms Purvis? I see there's a photos of - - -

PURVIS, MS: Yes, there - - -

HIS HONOUR: - - - the complainant and her injury.

PURVIS, MS: That's correct, your Honour. Through my submissions, your Honour, I will take you to some - the right of paragraphs that I think your Honour should have regard to.

HIS HONOUR: Yes.

PURVIS, MS: So essentially, to begin my submissions, your Honour, the State are of the view that there's certainly nothing in this matter that your Honour should consider would disturb, or would warrant your Honour's disturbing the disposition imposed by Magistrate MacLean, and the reason for that is this, your Honour: there are a number of aggravating features. First and foremost, S was on bail. And, your Honour, I addressed your Honour on that matter on the last occasion. So whilst it is accepted he had JJT referrals, your Honour has read the report. There was a sort of a failed engagement for the first referral, and then there was some engagement on that second referral.

But what the State also would like to draw your attention to is that it was on 16 November he is engaged in that rehabilitation process. There was some voluntary work, some victim awareness lessons, and I understand the report refers to mapping offences. I'm not quite sure what that refers to, but it does seem to be that it's engaging him in some kind of process to look at, you know, a rehabilitation process. So that's on 16 November, your Honour. However, it's only on, I think, 25 or 26 November he has then committed a further burglary offence. It's a home burglary offence, and he was disturbed by the person involved in that matter, which caused him to flee.

So he has then been on bail in the community in relation to this burglary offence. There have been some breaches of bail, and the one matter that I wish to draw your Honour's attention to specifically is that he was before the court - before Magistrate MacLean - on 10 January in relation to an allegation of a breach of bail, being an alleged breach of curfew. So only on 10 January, again we have this constant reminder of his requirement to be on bail; to abide by curfew, and on that occasion he was granted bail again on the basis of the submissions put forward on that day. So, then, turning to this offence, your Honour. The State say it was quite a considerable - there was premeditation.

There certainly was quite some considerable contemplation, the State would submit, in the evidence that

shows that S was contemplating, for quite some time, committing the offence on the complainant. I take your - the complainant's statement, or the victim's statement, is found at brief page 7 of the State's brief, and, particularly, I note that whilst he was on a 7 to 7 curfew at that point in time the complainant - sorry - the victim noticed him at 6 am when she went out to go and clean her yard. And, again, this is on page 7 of the brief and onwards. She noticed that he - there was a young boy standing on the street, and that he had been walking up and down the street about three or four times that morning, and she sort of made - she saw him, and she, in fact, at one point, waved at him after he waved at her.

After she had finished her yard she then went inside, and she locked her door, because, as at paragraph 13, she always locks her security door when she goes inside. And then she went in and made herself breakfast. It was then that she heard the - she then went into her wash room and heard some footsteps at her wash room door. She went to the front door and she saw S standing there, and he asked for some water. She said, "I don't have any waters." And he asked, also, for money to buy chips, and he again - and she said, "No, I don't have any."

And then, your Honour - I will take your Honour to paragraph 26 - the victim says, "I then thought, if my grandchildren had gone to someone's house to ask for water I would want them to give it to me." And so she said she would give him her water bottle that she used to take to church. She didn't want to unlock the door, so she walked back to the front door with the water bottle and he was standing directly behind it, waiting. So I will read from paragraph 30, brief page 9:

He looked - as I walked back to the front door with the water he was standing directly behind it, waiting. He looked ready to do something. He was still standing and looking towards me. I unlocked the door slowly, and I opened it just enough to pass the water bottle through the gap by the lock. He quickly grabbed the door with both hands to keep it open. The door was a security door. The water bottle fell onto the floor and rolled away. I grabbed the door with both hands to push him backwards and close the door.

We wrestled over the door for a little bit. He didn't say anything. I was very scared of him. I thought he must be young, because I was able to push him. If he was older I wouldn't be able to push him. He then reached down to his pants and pulled out a small knife.

I cannot remember what it looked like. He held it in his right hand. He was pushing - he was trying to push it towards me. I felt like he was trying to push it towards my chest. I held onto his hands and he cut my left hand near my thumb. He held onto my wrists, and I held onto his, pushing backwards and forwards. I managed, somehow, to get past him and go outside.

Your Honour, if I can then turn to another portion of the - in part of that brief, your Honour, there is statements of two witnesses the State has included for your Honour's consideration, and the first is the statement of Mr and Mr M. And that statement was included because Mr M was out and about in front of his house, which is [REDACTED] [REDACTED] in South Hedland, and you will note that the victim's address is [REDACTED], and he is the manager of a liquor store.

So at about 6.25 am on 2 March he went out of the front of his house for a coffee and a smoke, and he stood near his letterbox while he was drinking his coffee and smoking his cigarette, and he looked to his left and saw a young male wearing clothing that was similar to the clothing that was described by the complainant in her statement - the victim in her statement. And he was standing on the same side of the road as his place. He says:

He was standing in front of the house where the police shortly later attended and parked their marked four-wheeled drive police car. He was looking at the house adjacent to where he was standing. It was the same house that the police shortly attended.

So - repeat myself. And at paragraph 9 he says:

I watched him for about four or five minutes as he stood there watching that house. I watched him because I had never seen him before in the street. I believed he did not live in the street, and thought it was very strange. He was standing looking in the direction of the house. I have never seen him before. He was a kid.

And so he talks about how he continued to watch him for a little bit, and then he - and then at paragraph 15:

I think he noticed me watching him. He walked away towards the other end of the street.

So, your Honour - and that was about 6.25 that statement. And the final paragraphs I wish to take you to, your Honour, is the statement of A M P. A M P also resides in South Hedland. At about 6.20 am that morning she was taking her normal walk and she said she sighted a young male walking towards her on a laneway street between [REDACTED] Place and [REDACTED] Street. She said he appeared agitated and he - gave a description of it, being a young male, wearing the same types of trousers and a black top, and he had - again, consistent with the other two witnesses. And at paragraph 7 she says:

I got closer. I could see a knife in his hand, and I had not seen that when I first sighted him. The knife was in a leather sheath. It looked brown and grey in colour. It was about six inches long from the handle, and I could describe it as a hunting style knife. I walked past the young man and I said "Good morning."

It was when she - that particular witness, after a call for witnesses to the event, contacted police to tell them what she had seen. Your Honour would have pictures in the brief of the injury to the victim, and to, also, the police investigation, being in relation to identification of the offender. You will note that, at page 28, there's some picture of some shoes. There is a unique tread pattern. That appears to have been linked to a shoe imprint found in relation to the scene of the offence, and that's at brief page 30.

And, as through S's assistance, you will also see that at page 31 through to 32 are the pictures off the phone that were recovered by police, with S's assistance, in the video record of interview, and that at page 33 there are some pictures of a knife sheath that was found, again in connection with the location. So, your Honour, the State would submit that whilst the submissions are he didn't go out intending to commit an armed robbery, your Honour, it does seem that there is quite a significant period of contemplation by S from at least 6 o'clock in the morning, outside of his curfew hours, up until the point of about 6.45 am where he eventually does make a visitation upon the victim.

He is armed with a knife, and it's the State submission that he only then produces that knife when it seems that the victim is starting to get the better of him. It is quite clearly a most significant and frightening offence for the victim. In terms of aggravation, his Honour has - and I refer to his Honour Magistrate MacLean in his decision on the 18th. He has actually made some

submissions that the offence is actually very, very serious, and the State agree with the submission that a term of detention is the only available option in matters of this type. A weapon was produced. There was certain - whilst in some - it may be a strong word to use, your Honour, but, essentially, S was stalking that address for at least 45 minutes, and he was observed doing so by other members in the community.

He went there armed, and when he was becoming overpowered he produced the weapon to overcome the resistance of the victim basically getting the better of him, and he caused an injury, which is not unsurprising in these circumstances. The State submit this is a matter that quite easily could have come before your Honour for sentence rather than have been before the magistrate in the regions. In terms of the mitigating circumstances, the State do accept it was a very early plea. The State would submit that there is certainly significant strength to the State's case in the counter.

However, he does have - his antecedents, and his early plea, do warrant some mitigation but, certainly, the State would submit, not mitigation on disposition, but mitigation in length, which is precisely what the honourable magistrate considered was appropriate in the circumstances. And the State would submit it's wholly appropriate, given the very serious nature of the offending; the fact that S is not a young man in the eyes of the Children's Court, he's getting towards upwards of the age. He has had attempts to rehabilitation.

He was on bail, in breach of curfew. There simply is, your Honour, the State would submit, no other disposition than immediate detention. Your Honour, the State would also note, in terms of the premeditation I have, unfortunately, only belatedly forwarded to your Honour, through your associate, a map of the area. I don't know if your Honour has that in front of you.

HIS HONOUR: It has just been handed to me.

PURVIS, MS: Thank you. And, again, it's only briefly, your Honour. That's just simply to identify for your Honour that [REDACTED] Way and [REDACTED] Street, which is where the - where S was bailed to whilst he was on bail on the day of the offence, your Honour will note there's only about 900 metres between those two addresses. So the offending took place not too far from where S resided. In terms of him obtaining, again, a bottle of water, he could have gone home at any point in time.

Again, the State just say that adds to the fact that there was some premeditated - premeditation in that burglary offence.

The State would further submit that whilst S is from the communities, that a term of detention is likely to weigh more heavily on him and, again, that's factored in the term; in the length of the term, not the type of disposition. The State say that the offending is so serious that it justifies a term of immediate detention. Deterrence is a significant factor and, in that sense, your Honour, I do refer your Honour to the authorities of JA (A Child) v State of Western Australia [2008] WASCA 70 for the proposition that general deterrence does take increased weight when you have a serious offence that warrants its computation in the assessment of what the disposition should be. If I can assist your Honour any further.

HIS HONOUR: Thank you, Ms Purvis. S, I'm going to deal with your matter now; all right? I will talk to you of what I've got to say, but there's a few other things that I need to go through, and anybody who reads this needs to read everything that we discussed on the last occasion, and all of the materials that I have ever - that I have already referred to. This is an application for review, which is brought by your lawyer in relation to the decision of the magistrate who was sitting in South Hedland Children's Court on 18 March, and the review is in relation to only two of the charges he dealt with on that day.

The paperwork refers to more, but it's the two charges: 159, which was the aggravated burglary on that lady's house, and 160, which is the charge of aggravated armed robbery, which is what you did at the door when you were trying to get into the house. For the burglary you received two months detention. For the aggravated armed robbery you received six months detention, and those sentences of detention were order by the magistrate to be served at the same time. Now, my power to review that sentence is enlivened in this matter. The orders were made by a magistrate consequent upon findings that the charges were proved. The matter comes before me, sitting as the President, and the application was brought within time; in fact, it was brought immediately after the sentencing.

Now, the principles of review are well established. This is a hearing afresh. It's not necessary for error on the part of the magistrate to be demonstrated, and this is meant to be a quick and relatively informal process of review; it's not an appeal. And I have to consider what the appropriate sentence is, taking into account not just

what was before the magistrate, but all of the materials which are now before me, and what has happened since then. And, in this case, I am in a fresh position. I have much more information available to me than the magistrate had, and a much more detailed plan in relation to your proposed rehabilitation. And it's also significant that you have now spent, now, a total of 39 days in custody.

S, you come before the court with no prior convictions, but you jumped in, really, at the deep end. You've committed an incredibly serious offence, and it's why the prosecution have made the submission that someone who has got no prior record should still have received a sentence of detention. The facts are admitted by you, and I'm going to incorporate what the prosecutor read last time about those facts. I don't need to go through them in detail, but there are some things I do need to say about what you did in terms of why it makes it particularly serious. You were on bail at the time, and the prosecutor has gone through the history of bail and your involvement with the court and the juvenile justice system, and she has done all of that accurately.

But what makes this offending serious, S, is that this was an older lady who was - she's 72 years old. I've seen the pictures of her in the brief. She could be your grandmother; all right? She was vulnerable. You did target her house. The magistrate's findings about that were right. I know you told your lawyer, and your lawyer told the court, that you were just going there to get the bottle of water and then you saw the phone, and that's when you decided to do it, but the magistrate analysed that entirely correctly, and so does the prosecutor. There's no doubt you targeted that house, and I have now got more detailed statements from the prosecution than the magistrate had with those other witnesses who were standing nearby.

The people in the street saw what you were doing. Whether you were building up the - the prosecutor says that, you know, you were stalking the house. I suspect it was actually more a case of building up the courage to go to the door, but there's no doubt that you targeted the house, and that's why you went to the door. And, then, you took advantage of the generosity of this victim. That is something else which makes this serious. She went to get you the water, and she gave you the water. Some - many people wouldn't even have done that, and you, then, have tried to force your way into the house.

And I am also satisfied now, on the additional materials that we have that the prosecutor didn't have, that she was getting the better of you, as the prosecutor says, and you then actively produced that knife in order to overcome her resistance, because you wanted to get in and see if you could get the phone. I'm sure you had seen the phone at that point. Now, I don't think - I don't think - that you intended to hurt her, but it was always inevitable that something like that might happen, and that's how she ended up being cut. I know Ms Louw is up north and you're down here. Have you seen the photos, S? Right. Look at this.

JSO: Your Honour I have an extra copy here.

HIS HONOUR: It's all right. Take these. You show those two photos, Mr Usher, to S. That's at pages 22 and 23 of the brief. Do you see that, S? That's what you did. Now, you're the person responsible for that, S. That could be your grandma; all right? Because you wanted to get a phone, and you produced the knife. You thought threatening her with the knife would be enough, but she's scared. She resists you, tries to push you away and, pushing you away, gets cut with the knife, and she ends up being cut on her palm. Now, that's not a - that's an injury which required six stitches, but anyone who is cut on their hand, it's difficult for that to heal, because you keep moving your hand; the skin moves. Right?

And even when you overcome, even when this lady gets over the physical injury, S, she is left with a mental injury. Do you understand what I mean by that? No? Let me explain to you. This lady, now, is scared every single day of her life. She's scared when she goes to her door. I don't have a victim impact statement, but I don't need to; I've read her witness statement. She is scared, now, every time she goes to her door, wondering if it's going to be someone else who's going to attack her. She will be scared at home at night. She will be locking the doors. She will be scared when she goes out of the door and she sees strangers in her street, and it will be worrying her. She's probably losing sleep; right? And whose fault is that, S? You're the one - - -

OFFENDER: Me.

HIS HONOUR: Yes, that's right. You're the one who has got to live with the responsibility of this. You have hurt somebody, and that hurt for them doesn't go away. You've probably experienced hurt in your life as well, you know how that feels. Well, you're responsible for this lady's

hurt. Do you understand that? And when you did this, as the prosecutor says, you were on bail. The magistrate's finding about the facts were completely accurate and, as I say, I've supplemented some of them now that we know more. In sentencing you, though, I've got to look at not only the seriousness of what you did, which is, as I said, very serious, but we've got to look, also, at you, and you did come before the court as a first offender.

Now, Ms Purvis is right to say that you are 16 years and five months old now, and so it's not as though you were 13 or 12. You're getting on; getting to be more mature; more responsible for your actions in that way, and the principles of juvenile justice, which are so important, apply slightly differently as you get older. But you are still a first offender, and before you were sentenced by the magistrate you had spent 18 days in custody, and you've now spent 39 days in custody of that sentence that the magistrate imposed upon you.

And the service of 39 days in custody for someone who has never been in trouble before is a big thing, and I know it's a particularly big thing for you, because you had been dragged away from up north where you've lived all your life, and you come down to Banksia Hill; somewhere you had never been before. You're away from your country but, most importantly, you're away from your family. You have told me, and I accept that it's reinforced by what I've read in the reports, that you've got no one else down here; had no visits; no calls. So you being down here in detention is very different to a kid in Perth being in detention who can still get visits from their family and see them, and have that contact. You have been completely isolated, and so your experience of that 39 days has been more difficult.

I know a lot about your circumstances now because of what I've read in the reports. You're the youngest of seven, and it does seem to me that this offence was very much committed in circumstances where you were not getting, really, any supervision at all in Hedland. You weren't subject to neglect. Your brother was doing his best to look after you, but he was busy with working, and you were clearly running amok in Port Hedland. Your mother, because of her cultural and family obligations, and her own circumstances, moving around all the time, still moving around all the time, and that has made it - well, she has not taken much role in supervising you recently.

You, yourself, have suffered considerable loss, which has been because of your father dying when you were 10, and I know that has affected you deeply. That lack of

supervision in your life has meant that you've not had much schooling, which is why I got the report. You haven't been to school since 2018, and I know, now, about your poor attendance, and it explains why you have got poor literacy. Because you weren't having much adult supervision, you were running around with a bunch of young people in and around Hedland, and not only getting into trouble, although you did this offence on your own, it seems you were getting into trouble with other people as well, and smoking cannabis, and drinking.

As I said on the last occasion, it was clear to me that you needed more structure in your life; you needed a mentor and an education plan. Now, the big advantage that I have is that, since you've been in custody, further reports have been prepared. Ms Purvis has gone through the Juvenile Justice Team history. I don't need to go through any of that. What I really want to talk about is the future, because I've very impressed by this particularly Youth Justice report, which has a detailed plan which, as I say, was not before the magistrate when there really was not much of a plan. And I'm not being at all critical of the Youth Justice report authors at that time. You pleaded guilty quickly because you were in custody.

It's always a good thing when people plead guilty quickly, but there wasn't really a plan which would have given the magistrate any confidence that you were going to stay out of trouble, putting aside, even, that he concluded that the offence was so serious that detention was required. Now, the plan now is much more detailed, and certainly gives me some confidence not only that your rehabilitation will be fostered, but also that the community would be better protected if you were given a chance on this plan.

The plan now, which has been developed by the Youth Justice and education officers up north, with the engagement of your family - they managed to get in touch with your mum, but she's still not able to look after you - but you've got an adult sister who lives in Derby; right? I know she hasn't spoken to you, because she has been looking after her kids, but the Youth Justice officer in Derby has been to see her and spoken to her, and she is prepared to have you live with her in the community south of Derby.

OFFENDER: Yes.

HIS HONOUR: Right? She has got four kids; your cousins.

OFFENDER: Yes.

HIS HONOUR: Yes. She says she is prepared to look after you; all right? I know this has been discussed with you as well. And for the first time, also, we've now got what seems to me to be a fairly detailed education and vocational training plan if you go to Derby.

OFFENDER: Yes.

HIS HONOUR: So from term 2 in Derby.

OFFENDER: Yes.

HIS HONOUR: So those education school programs have been explained to you. And not just school, but also giving you some training and skills, right, so you can get work in a job. All right? So we've got that. The youth support officer in Derby has got a mentoring plan in place. Importantly, on the basis of what I have read, you, S, actually volunteered, when you've spoken to the Youth Justice officers, that you're feeling much better, actually, in Banksia Hill. You're feeling better not - because you're off the gunja - - -

OFFENDER: Yes.

HIS HONOUR: - - - and you haven't been drinking, and your health is better; is that right?

OFFENDER: Yes.

HIS HONOUR: And there seems to be some change in attitude. That's probably because you've been locked up for 39 days and you're not enjoying it, are you?

OFFENDER: Yes.

HIS HONOUR: I also take into account that things have been pretty tough in Banksia while the time that you have been in there. And there's a plan, also, for you to continue drug counselling and alcohol counselling in the community. So that plan does give me some confidence in terms of keeping S out of trouble in the community, but also improving his lot in life, particularly in terms of those educational and vocational opportunities. Now, I have been through the magistrate's reasons very carefully. He gave S credit. He started the sentence at 10 months and reduced it to six months. I well understand why he came to the conclusion that he did.

It is fair of Ms Louw to point out that, in coming to the conclusion, only detention was appropriate. The magistrate didn't go on to consider whether that was a detention sentence which would be served in the community, or whether it was the sentence of absolute last resort which had to be served in custody. But Ms Purvis is correct to observe that it was open to the magistrate to conclude, at that time, that the offence was so serious that even though S had never been in any trouble before that a sentence of immediate detention was appropriate, indeed, the State submit that it still is appropriate.

I have thought about that very carefully but, ultimately, I am persuaded that, because of the overriding principle of Juvenile Justice, which is to foster rehabilitation, because rehabilitation - effective rehabilitation - is always in the best interests of the community, that notwithstanding the seriousness of S's offending, it does seem to me at this point, where he has now spent the period of time in custody that he has, and we've got a clear, and I think what might be an effective, plan I think there is scope to give S the opportunity to serve a sentence of detention in the community. And, so, notwithstanding that the offending was very serious, I am going to discharge the magistrate's orders of detention on those two charges.

Now, having said that, Ms Purvis is right about one thing: this is an offence which was so serious that it could well have come to me for sentencing straight off the bat. And the magistrate did discount the sentences of detention significantly, no doubt because he was intending it to be one immediately served, and for the other reasons that he did. I actually think that, having discharged the sentences, the appropriate sentence of detention now, taking into account the 39 days spent in custody, is still one, from today, of six months detention, but it is going to be a sentence of six months detention served on a community - served on a conditional release order from today, and in exactly the same terms otherwise. So, two months on the aggravated burglary and six months on the aggravated armed robbery.

Now, S, let me explain to you what that means; right, in simple terms. In one sense you got off pretty lightly, the magistrate only giving you six months. I might have given you more. All right? So you've done 39 days in custody, I've taken that into account, but it's still six months detention from today. The difference is, it's six months detention in the community. But don't

think that's easy. You've literally got still, from today, six months detention hanging over your head in the community; right? But I'm letting you go home to go and say with your sister in Derby if you are prepared to comply with the conditions of the order, which you have discussed with the Youth Justice officer and Ms Louw. Are you prepared to do that?

OFFENDER: Yes.

HIS HONOUR: That means being on court order - - -

OFFENDER: Yes.

HIS HONOUR: - - - doing all those things - - -

OFFENDER: Yes.

HIS HONOUR: - - - going back to school, or doing those other programs that they've got in place for you in Derby. Right? Are you prepared to do all that?

OFFENDER: Yes.

HIS HONOUR: Yes. Good. S, if you stuff this up; right, if you breach the conditional release order - - -

OFFENDER: Yes.

HIS HONOUR: - - - it means you come back to me for resentencing.

OFFENDER: Yes.

HIS HONOUR: And there's not going to be many options open to me then, are there?

OFFENDER: Yes.

HIS HONOUR: So you're away from those boys in Hedland now. You're clean. You're off the gunja. You're not drinking. So you go and stay with your sister in Hedland and - sorry - in Derby, and you stay out of trouble. Can you do that?

OFFENDER: Yes.

HIS HONOUR: Good. Because I don't want to see you back down here in Banksia Hill with the other boys down there; they're a bad influence as well,

OFFENDER: Yes.

HIS HONOUR: Good. You're shaking your head. I think you're pretty serious about that. You've learnt your lesson. All right? So don't be getting into any more trouble. Any other matters, counsel?

LOUW, MS: No. Thank you.

PURVIS, MS: No, not from the State, your Honour.

HIS HONOUR: Sorry?

GLEIM, MS: With attendance and supervision?

HIS HONOUR: With the attendant supervision requirement, exactly the same, Ms Gleim, as on the agenda.

JSO: And the other charges are section 67?

HIS HONOUR: They were dismissed.

JSO: Yes.

HIS HONOUR: So they're not part of the review, those two.

JSO: Thank you.

HIS HONOUR: Okay. Good. We will adjourn, and move onto the next matters after that.

AT 3.35 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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