

DIRECTOR OF PUBLIC PROSECUTIONS

v

DAMIAN HONEYSETT

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JUDGE: HER HONOUR JUDGE LAWSON  
WHERE HELD: Melbourne  
DATE OF HEARING: 25 July 2017  
DATE OF SENTENCE: 28 July 2017  
CASE MAY BE CITED AS: DPP v Honeysett  
MEDIUM NEUTRAL CITATION: [2017] VCC 1006

**REASONS FOR SENTENCE**

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Subject: Criminal law – Sentencing – Armed robbery and theft – Relevant prior criminal convictions – aboriginal offender – participation in sentencing conversation – Koori Court Division – immediate term of imprisonment imposed.

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<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Mr M Roper	John Cain, Solicitor for Public Prosecutions
For the Accused	Ms A Beech	Stary Norton Halphen Pty Ltd

HER HONOUR:

- 1 Damian Honeysett, you have pleaded guilty before me on indictment to one charge of armed robbery and one charge of theft. Those charges arise out of an incident that took place on 24 February 2017, and involved the theft of a motor vehicle and an armed robbery that took place at the Dan Murphy's store in Glen Waverley.
- 2 The offences are both serious, and that is reflected in the maximum penalties that is prescribed by law and that is 25 years' imprisonment for the armed robbery and ten year's imprisonment in respect for the theft.
- 3 You are now 24 and you were 23 at the time of the armed robbery. You have a significant and concerning prior criminal history that you admitted. It spans a period from 21 February 2008 until 5 December 2016. You first had contact with the criminal justice system in the Children's Court when you were aged 15 when you were dealt with for a robbery and you were placed on Probation and thereafter there are multiple court attendances.
- 4 Of particular relevance is that you have two prior convictions in respect to armed robbery charges. When you were 18 you were dealt with for an attempted armed robbery, burglary and theft charge for which you were placed on a Youth Training Centre Order. Later you were dealt with, at that age, for an armed robbery in the County Court and you were placed on a Youth Training Centre Order. At age 20 you were dealt with in the County Court for an armed robbery for which you received a two years' sentence to serve 12 months' minimum. You have further attendances at court thereafter for dishonesty offences and unlawful assault on two occasions.
- 5 You elected to have your matter heard in the Koori Court Division of this Court and a sentencing conversation took place in the presence of two elders and respected persons. In doing so you consented to that matter being dealt with in that manner and you participated in a sentencing conversation. The Court of

Appeal in this State has recognised that such a conversation is designed to further the reformation of an aboriginal offender.<sup>1</sup>

6 The elders and respected persons, Auntie Pam Peterson and Uncle Lloyd Hood were very challenging and you were very respectful towards them and participated genuinely in the sentencing conversation. Such participation is not easy, indeed it is challenging and your real participation in the process is a factor that mitigates punishment.

7 It was obvious to me, from the way in which you participated in the conversation, that you were truly sorry for what you had done and that you do have an evolving sense of wanting to do something about making real changes in your life. In part that is evidenced by the fact that you are now drug free and you have expressed a willingness to deal with your underlying problems.

8 I will now turn to the circumstances of the offending. I will sentence on the basis of the Crown Opening that was read at the plea hearing and marked as an exhibit.

9 Briefly, a Ford Falcon vehicle was stolen by your co-accused, Halit Dogan, from a service station located on the Nepean Highway, Chelsea, at about 9.15 am on 24 February 2017. Mr Dogan was driving the vehicle in the Glen Waverley area at about 2.00pm. He collected you and the other co-accused, Thomas Coumvoulidis. You all agreed to commit an armed robbery at the Dan Murphy's store, Glen Waverley.

10 Mr Coumvoulidis was armed with a machete and you were armed with a knife. Mr Coumvoulidis changed his clothes in the car. He changed his appearance by wearing a different pair of tracksuit pants, a yellow and blue fluoro hooded top, gloves and a red bandana around the lower part of his face. You did not change your clothes. However, you put on a black and white Von Zipper cap,

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<sup>1</sup> *R v Steelie Morgan* [2010] VSCA 15.

sunglasses and blue bandana around the lower part of your face. So that, in effect, was an attempt to disguise your facial features.

11 At about 2.24 pm, the stolen Ford Falcon stopped outside the front of the Dan Murphy's store. Mr Coumvoulidis got out of the front passenger seat armed with the machete and headed towards the entrance, before turning around briefly and retrieving a green grocery bag from the vehicle, he then headed back towards the entrance.

12 You then got out of the rear left passenger seat and ran into the store armed with a knife. Mr Coumvoulidis stood guard at the entrance doors, keeping them open.

13 CCTV footage was viewed by the court and that depicted the incident in its entirety in the store. The store was a busy one, there were customers present, as well as staff members. On the footage a customer, Mr Zhou, is shown at the register partway through completing his purchases. He was being served by an employee, Jessica Gerardi. You ran up to that man armed with the knife. You appeared agitated and aggressive. You pushed Mr Zhou in the back, forcing him into the register counter. You then pointed the knife towards the employee, Ms Gerardi, and made a demand for money. She was terrified and screamed and stepped away from her register. Natalie Meehan, her manager, heard the scream and could see that she was panicking. She walked towards the register, telling Ms Gerardi to step aside, and telling you that she would get you the money. You continued to wave the knife around, making further demands for money, saying "Hurry up, hurry up" and to the customers you said "Get the fuck back".

14 Ms Meehan was having difficulty opening the register for you, and you told her that she had 30 seconds. Mr Zhou said that he heard you say "I'm going to count to five", whilst another customer, Matthew Thomas, said you started a count from one to five, and he heard you say that when you got to five you were

- going to stab her. Ultimately, she was able to prise open the register and remove the drawer insert, and she was in the process of placing it on the counter when you grabbed it from her and ran from the store.
- 15 Mr Coumvoulidis joined you, and then you both ran to the stolen motor vehicle and drove off. One of the other customers was able to obtain the registration number.
- 16 All in all you were in the store for about 52 seconds. But in that short time you caused a lot of people to be affected. You stole cash to the value of \$1052.35.
- 17 Police recovered the stolen vehicle the next day. Later the next day both you and Mr Dogan, who had possession of the stolen car keys, were arrested. When you were formally interviewed you denied any involvement in the armed robbery.
- 18 Mr Dogan made admissions to stealing the motor vehicle but, when asked questions about the armed robbery, he stated “No comment”. On 28 June 2017, Mr Dogan (who is also aged 24 and also has a troubling prior criminal history) pleaded guilty to a consolidation of matters which included theft of the motor vehicle used in the armed robbery. Ultimately, he has not been charged with armed robbery. He received an aggregate term of imprisonment of nine months. Given that he has not been charged in respect to the armed robbery, and that he was dealt with in respect to other criminal matters, there is very little by way of comparison that can be made with respect to his sentence. Nevertheless, I have taken it into account.
- 19 On 10 March 2017, Mr Coumvoulidis was arrested. He denied any involvement in the armed robbery. He is contesting the charge and his trial is listed for 12 June 2018.
- 20 In the sentencing conversation a Victim Impact Statement from the manager, Natalie Meehan, declared 24 July 2017 was read to the court. She confirms

that she suffers ongoing anxiety and has a heightened awareness of stress, particularly in her workplace. She is often left with sole responsibility for her colleagues' safety. She states that she is easily distracted and panicked by loud noises, and is extremely conscious of her surroundings, particularly in busy areas. She has undergone multiple counselling sessions and has regular contact with a psychologist to deal with her ongoing anxiety.

21 There were no other Victim Impact Statements that were filed but, having regard to the depositional material, together with what I observed on the CCTV footage, your actions on that occasion would have caused real terror to those customers and employees who were present and observed your aggressive, threatening and intimidating demands.

22 In sentencing you, there is a need to punish you for your actions and also to emphasise general and specific deterrence, which are to be modified in respect to your particular circumstances.

23 Ms Beech on your behalf has put a number of matters in mitigation. She formally tendered a report from Mr Michael Crewdson, psychologist, dated 20 July 2017 and for completeness, a report from Ms Carla Lechner dated 15 March 2013.

24 You are a person who has been assessed in the past as having a mild intellectual disability. Mr Crewdson says that you are not greatly intellectually disabled but definitely disadvantaged. He stated that you know right from wrong. He stated further that there was no indication of any major psychological illness such as psychosis or bipolar disorder.

25 I have had regard to your difficult childhood and impoverished and dysfunctional family life. You are the middle of three children. You have an older sister and a younger brother. You were initially raised by your parents, both of whom had significant drug problems. Your mother died from a heroin overdose in 1997 when you were aged about four. Your father was in and out of gaol throughout

- your early life and he died in 2009 when you were aged 16. You had a brief placement in foster care before going to live with your paternal grandmother, Barbara, in Reservoir. When your father was released from gaol you lived with him and step-mother from time-to-time.
- 26 You attended Reservoir Primary School and Collingwood Secondary College until the end of Year 8. You have difficulty with literacy and cannot read or write properly.
- 27 Your father was a known drug user and dealer and had a history of serious criminal offending for which he underwent long gaol terms. Your grandmother, Barbara, currently lives in Leeton, New South Wales. She has recently had a stroke. She is not aware of your offending and you indicated that you did not wish to upset her further.
- 28 Tragically since your late teenage years you have been in and out of custody due to your criminal offending. You have never maintained consistent employment and you have a long history of drug abuse. You began using cannabis at age 13 and, at age 15, commenced using amphetamines.
- 29 The context to this offending was that you had been using ice heavily and I am told you were using GHB combined with ice daily. You were mixing with other drug users and you undertook this crime to assist one of your friends whom you were worried about because he was being threatened by others who were dangerous to whom he owed money for drugs. Therefore the genesis of the offending was to obtain money to settle a drug debt. You now acknowledge that that is no excuse for this serious offending and whatever happens, you are prepared to take responsibility. You acknowledge that what you did was wrong.
- 30 You expressed a strong desire for the future, to obtain secure employment, accommodation, and to remain drug-free. You openly acknowledged that you have been caught up in a vicious cycle of heavy drug use, offending and gaol, and you have expressed a desire for that to stop.

- 31 When challenged by both elders you openly acknowledged that your actions would have caused great fear to the cashier. You told the elders that you were attempting to undertake programs whilst you were in custody, but it had been difficult because of your status as a remand prisoner. Both elders emphasised the need for you to formulate a plan for your future and the need to stop taking drugs and to obtain better friends. You need to think about employment options and programs that will address what drives your offending behaviour.
- 32 I noted that you are currently working as a billet in your unit, which is a position of some responsibility. You are responsible for ensuring the daily cleaning of the unit. That is a good sign that you are taking responsibility.
- 33 It is necessary for you to ensure that for the future you acknowledge that there is a need to respect others and to be aware that people are entitled to feel safe in their workplace, and that people's property ought to be respected. Both the elders commented that you had wasted your precious adult years and that there was a real risk of you becoming institutionalised unless you changed your ways.
- 34 You are a man of Wiradjuri descent who knows little about his indigenous history and culture. You indicated a strong desire, to learn more about your culture and some suggestions were made to you in the sentencing conversation to assist you in that regard to make the connections to discover who your people are and what your culture is. It was indicated by the elders that it is important that you know who you are and your culture and to understand that your culture does respect others.
- 35 You indicated a desire for there to be real structure put in place upon your eventual release. You stated that at the time of the offending, you were about to commence a plastering apprenticeship, but that you had given up hope. You want to now change your lifestyle and focus on working and being drug-free in the future.



- 36 Your counsel, Ms Beech, conceded that a term of imprisonment would be imposed but submitted that consideration ought be given to a sentence that combined gaol with a Community Correction Order, and reference was made to the guideline judgment in *Boulton*.<sup>2</sup>
- 37 However, given the seriousness of this offending together with your antecedents, I consider that such a sentence is not warranted and would not reflect just punishment.
- 38 In formulating the appropriate sentence I have had regard to the objective seriousness of the offending. This is a serious example of the serious offence of armed robbery. It was spontaneous but there was some planning. You were acting in company with others. Two of your group were armed. You were armed when you went into the busy store and menaced the female staff member with the knife, making your demands for money. Your actions were terrifying for all of those who were present and you utilised a stolen vehicle to leave the scene that was being driven by another person.
- 39 In sentencing you, I have had regard to your plea of guilty. It was entered at the earliest stage, at committal case conference on 22 May 2017. There is real utility in your plea. You have spared the victims the trauma of having to come to court to give evidence on the trial. You have saved the State the cost and expense of a trial. You have facilitated justice so your sentence will be discounted accordingly.
- 40 I also accept that it is an expression of some remorse on your behalf and contrition on your part.
- 41 You are still relatively young. However, you are now in your mid-20s and there is a real need for you to be more responsible in the future. I am satisfied, having

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<sup>2</sup> *R v Boulton* [2014] VSCA 342.

- regard to your behaviour during the sentencing conversation, that you now do demonstrate a desire to be more responsible.
- 42 For the future you need to draw on the strength of the strong role models in your family and in particular, I urge you to give consideration to what your grandmother, Barbara, has achieved through her positive contributions to the aboriginal community, through her service at the Victorian Aboriginal Legal Service and Ngwala Willumbong, the alcohol and drug outreach service for aboriginal people and their families.
- 43 In terms of your background, I have given you full weight for the effects of your profound childhood deprivation. Those effects do not diminish over time. It has undoubtedly impacted upon you and your development and upon your choices that you have made in respect to drug taking and offending. I have moderated the need to emphasise both general and specific deterrence and there is a slight reduction in moral culpability. Nonetheless, I must take into consideration other sentencing factors, such as the need to provide just punishment and also for the protection of the community.
- 44 Overall, I remain somewhat guarded about your prospects for rehabilitation. But you are still relatively young. You are not beyond rehabilitation. You do need the supports outlined by Mr Crewdson, the psychologist, in his report. You need support to encourage you to remain drug free. You need support to address your history of repeated offending. You have given an indication to the court that you are ready for and want to make immediate and permanent behaviour changes. Sadly, you have said that once before and this is yet another demonstration of you not being able to keep to your own commitment. You need to act on your expression of wanting to change. There needs to be a real change in your behaviour if you want to stop offending and going to gaol.
- 45 Intensive psychological counselling is recommended to effect lasting change. Mr Crewdson recommends inpatient treatment at an institution such as

Odyssey House to assist you to make the transition back into the community drug free. He states that you are at an age and state where you could make effective change to your own situation and become a more contributing member to our community. I urge the Adult Parole Board to have regard to what was said in the sentencing conversation and also those recommendations made by Mr Crewdson if the changes which you say you want to make are to be made so as to provide for your best rehabilitation prospects for the future, but also to provide the best outcome for the community in terms of community protection.

46 I will now impose the sentence. I must impose just punishment and on behalf of the community say to you that what you did was wrong. That is, denounce your behaviour. Could you please stand now, Mr Honeysett, I will impose the formal orders. They are as follows.

47 Charge 1, armed robbery, you are convicted and sentenced to four years and six months' imprisonment.

48 Charge 2, theft, you are convicted and sentenced to one year imprisonment.

49 I make the order for cumulation. I direct that six months of the sentence imposed on Charge 2 be cumulative upon Charge 1, making a total effective sentence of five years' imprisonment. I fix a non-parole period of three years.

50 I make the following declaration pursuant to s6AAA of the *Sentencing Act 1991*, but for your plea of guilty, I would have imposed a term of imprisonment of six and a half years to serve four and a half years.

51 I make the following declaration of pre-sentence detention. I declare that you have already served 154 days of the sentence I have just announced, and direct that that be entered into the records of the court.

52 Finally I make the compensation order sought in the sum of \$1,052.35 in favour of Dan Murphy's.

53 I think that covers everything.

54 MR ROPER: Yes, Your Honour.

55 HER HONOUR: Yes, all right. Now, Ms Beech, did you want to speak with your client downstairs?

56 MS BEECH: Yes, I will, thank you.

57 HER HONOUR: All right. Mr Honeysett may be taken back down to the cells. Your barrister will come down and speak to you, Ms Beech.

58 PRISONER: Yeah.

59 HER HONOUR: All right, thank you. All right, we can adjourn.

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