

IN THE COUNTY COURT OF VICTORIA

Revised
(Not) Restricted
(Not) Suitable for Publication

AT MELBOURNE
CRIMINAL JURISDICTION

CR 16-00303

DIRECTOR OF PUBLIC PROSECUTIONS

v

STEPHEN NICHOLSON

JUDGE: HIS HONOUR JUDGE PARSONS
WHERE HELD: Melbourne
DATE OF HEARING:
DATE OF SENTENCE: 16 November 2016
CASE MAY BE CITED AS: DPP v Nicholson
MEDIUM NEUTRAL CITATION: [2016] VCC

REASONS FOR SENTENCE

Subject:
Catchwords:
Legislation Cited:
Cases Cited:
Sentence:

| <u>APPEARANCES:</u> | <u>Counsel</u> | <u>Solicitors</u> |
|---|----------------|-------------------|
| For the Director of Public Prosecutions | Mr M Roper | |
| For the Accused | Ms C Blakeney | |

HIS HONOUR:

- 1 You, Stephen Nicholson, have pleaded guilty before me to the matters contained on indictment F13147832: an offence of burglary, an offence of theft, and there is also a summary offence which is before me pursuant to the appropriate legislation of committing an indictable offence whilst on bail, to which you have pleaded guilty.
- 2 There are also other matters before me and they are matters which are charges - offences which are set out on indictment E13973880, and that comprises seven charges of knowingly deal with the proceeds of crime, seven charges of obtaining property by deception, one charge of burglary, two charges of theft and a further summary charge which is before me pursuant to the appropriate legislation of breaching a condition of bail.
- 3 Openings have been provided and they are Exhibits 1 and 2 respectively. I propose to summarise the matters that are there set out. Firstly, with regard to the opening of 4 January 2016, Exhibit 1, it is noted that at the time you were committing offences you were aged 37.
- 4 At approximately 9.30 pm on Saturday 14 August 2015 you went to the South Melbourne Central Shopping Centre at 11 Cecil Street, South Melbourne. You were not disguised. You walked about those premises before leaving and then returned just shortly before midnight that same evening. You entered again through the afterhours access door. You then went to the premises of Spotlight Photography and you applied force to a door of the premises, causing it to open without any damage. You then entered the premises, you used a screwdriver to open a deadlocked storage room door.
- 5 You went into the room and placed a number of cameras, photographic equipment and \$250 in cash into your backpack. You then picked up a bottle of bleach, splashed it around the storage room, before leaving with the stolen items. You were captured on CCTV footage and your face was clearly visible.

- After leaving you went to Armadale where you sold the stolen items to an unnamed acquaintance. The stolen goods were valued at \$112,645.70.
- 6 After obtaining that footage police identified you and subsequently arrested you and then interviewed you and you made full admissions regarding the incident. There are various admissions set out at paragraph 7 noting that you realised, as you said, about \$1000 for the various cameras and items you took, and you say you used that \$1000 to pay rent. It is accepted that you pleaded guilty at the earliest opportunity.
- 7 With respect to Exhibit 2, the opening of 8 March 2016, the offending there described is as follows.
- 8 At various times and locations between 6 July 2013 and 31 July 2014 you attended EB Games stores in possession of items such as figurines, video games and Apple electronic products suspected of being the proceeds of crime, and those matters give rise to Charges 1, 3, 5, 7, 9, 11 and 13, the charges of knowingly deal with property suspected of being the proceeds of crime.
- 9 On each occasion you told the relevant sales assistant that you were the owner of the items and that you wished to sell them to EB Games as second hand goods. On each occasion you produced your Victorian driver's licence as proof of identity and signed your name on a receipt.
- 10 On each occasion you were paid either in cash or received funds paid into your debit card, and that gives rise to Charges 2, 4, 6, 8, 10, 12 and 14, obtaining property by deception. You received a total of \$4670.45 from EB Games.
- 11 You were arrested on 27 November 2014 and when interviewed you made full admissions, stating you had made over \$1000 from your offending. It is also noted that a co-offender, Ms Tania Steer, your then 24 year old partner, was also arrested and made full admissions. She was sentenced to four months imprisonment which was reduced on appeal to an 18 month community

corrections order.

- 12 At approximately 11.30 pm on 9 October 2014 you went to the Acland Arcade at 158 Acland Street, St Kilda. You jemmied open the glass sliding doors and entered the arcade. At 3.30 am you returned to the arcade, gained entry and again walked around looking at the shops.
- 13 You tried to open the roller doors to several shops but you were unsuccessful. You then entered a small storeroom under the escalator and made a hole in the plaster wall which enabled you to gain entry to the Vodafone store. That gives rise to Charge 15 of burglary. Once inside you stole 84 mobile phones, \$3200 in cash and other miscellaneous items. The total amount of the stolen goods and cash was \$42,837.95. None of the stolen property or cash was ever recovered. Those matters give rise to Charge 16 of theft.
- 14 You were arrested and interviewed on 30 July 2015. You made no comment but you made a concession that the person on the CCTV footage looked like you. At approximately 2 am on 12 November 2014 you went to the Sothern Cross Railway Station and you walked around the station area for over an hour before entering a 7 Eleven and a Hungry Jack's store and loitering in the station foyer.
- 15 At approximately 3.15 am you went to the station's locker hire area. You then opened a locked door and a cash safe at the locker pay station. You stole cash from the cash safe. You then went to a nearby public toilet where you filled a coffee cup with cleaning fluid from a cleaner's trolley and attempted to wash and wipe down the machine from which you had stolen the money.
- 16 Notwithstanding those attempts the police did in fact locate your fingerprints on the pay station and cash box and you were also identified in the CCTV footage from the 7 Eleven store. The amount of cash stolen was at least \$500 and the damage to the machine and locker door was \$10,833, and those matters give rise to Charge 17 of theft.

- 17 You were arrested and interviewed on 30 July 2015, made denials with respect to your involvement, but again made concessions that the person captured on CCTV footage looked a lot like you. You were granted bail at the Melbourne Magistrates' Court on an unrelated matter with a condition that you reside in Coventry Street, South Melbourne. On 25 November police attended that address and were told by the occupier you hadn't resided at that address for ten days and that gives rise to the summary charge of contravening a condition of bail.
- 18 On 29 February at a committal mention hearing the matters were resolved and proceeded by way of straight hand up brief. The various maximum penalties are there set out.
- 19 There are no victim impact statements in the matter, but it is clear that various persons have been substantially inconvenienced as a result of your actions and may or may not have incurred losses depending on their insurance arrangements, but the significant thing is the amount - the value of the goods that you have taken is clearly very significant and of course the damage you have effected in carrying out those thefts is also significant.
- 20 As was pointed out by your counsel, there are a number of mitigating factors. You have pleaded guilty and you are entitled to have that fact taken into account and I do so. The community has by your pleas to these various matters been spared the time and cost of a trial and witnesses have been spared the ordeal of giving evidence upon your trial, and I can tell you the sentence I intend to impose is far less than would have been imposed had you been found guilty after a trial.
- 21 I take into account in your favour that notwithstanding on a couple of occasions you didn't make ready admissions, generally you did and certainly you have pleaded guilty to these charges in a timely way and you clearly are so well known by the police that you can be recognised readily from any CCTV footage,

- as has happened on a number of occasions, as is revealed in the openings.
- 22 I do accept in your case your pleas do indicate remorse for your actions and of course this matter was before me and the elders of the Koori County Court in circumstances that can be recalled, and of course there were various attempts made to assist you to effect your rehabilitation from your drug problems.
- 23 The history of those matters and the relevant chronology with respect to them can be readily gleaned from the court records. During the sentencing conversation I was told a considerable amount about your personal history and your circumstances. You were aged 35 to 37 at the time and you are now aged I believe 38.
- 24 You have a significant number of prior convictions. I think the first was in the Lilydale Magistrates' Court on the 12th April 1996. There are 29 pages of details. The last recorded one on 2 June 2015 of possessing heroin.
- 25 As I have already noted in those 29 pages of previous matters there are a great number of dishonesty and drug related matters on almost each, if not every, page. Of course a number of reports were tendered and there was a significant sentencing conversation with respect to you and your antecedents, and in particular of course I have Exhibits D and F, the letters from Odyssey House, as well as the report of Dr Cunningham of 22 February 2014.
- 26 I think I will first refer to the report of Dr Cunningham which was prepared with respect to a then appeal which was listed for 6 March 2014, I presume in the County Court.
- 27 Your background is there set out, but it is also set out in the submissions of counsel before me and I will refer to that in that context. Your education vocational history is also set out, your drug and alcohol history is set out, and also a mental state assessment as well as a psychometric assessment.
- 28 I think it useful to refer to the mental state assessment which notes that you

present with symptoms of depression and you also present with sexual abuse trauma. It is no doubt, as Dr Cunningham suggests, that you would benefit from engagement with psychological intervention to address your perceptions of abandonment, to improve your symptoms of depression and address your unresolved issues relating to your sexual abuse.

29 The psychometric assessment is a very varied one in the sense of the test results are disparate, for example, on the verbal comprehension you scored better than 5 per cent of your aged peers, whereas 95 per cent would do better. On your perceptual and reasoning index you scored better than 55 per cent of your peers and that meant 45 per cent would do better. On the working memory index you performed better than 30 per cent of your peers and on the processing speed index you performed better than 4 per cent of your aged peers.

30 As Dr Cunningham notes your results indicate a significant verbal learning disorder. Your ability to reason with words was assessed as significantly lower than your ability to reason without words, and in his summary and opinion he notes that you present with symptoms of depression and sexual abuse trauma, that your symptoms of depression are perpetuated by your drug and alcohol abuse and they are related to instability in your accommodation and employment.

31 Of course in his view and a view that I share, if it was solely your interest that was to be considered here and what was best for your rehabilitation then you would clearly benefit from the disposition which facilitated that. That would include working towards your long-term goals of a stable family environment with your current partner and children, noting that you have children from three relationships, two in one relationship, three from your second relationship and two from your current relationship, if indeed it is still current.

32 The submissions provided on your behalf by Mr Grimshaw initially and then Ms

Pemmelar, are Exhibits A and E respectively. They each have a chronology noting when you were released from prison and then how you were committed to the Koori County Court and then the matters that are relied on in mitigation.

33 I think it appropriate to summarise your personal circumstances as Mr Grimshaw then set out in his submissions of 29 January of this year. What he noted was that your parents were separated when you were two. You are estranged from your biological father and as a young child and adolescent your mother's partners subjected you to physical abuse and you also witnessed your mother being violently assaulted.

34 You were sexually abused by a family member when you were in primary school. You had frequent changes of address and attended five to six different primary schools and you left high school during Year 8. Dr Cunningham explores those matters. There is then reference to the fact of what Dr Cunningham had to say about you.

35 Your mental illness, as it is there put, is described and of course that is a summary of Dr Cunningham's materials. Your family circumstances are also there set out and of course I have been reminded again this morning of your situation by counsel, Ms Blakeney, who appears for you, and particularly another significant matter occurred recently with respect to one of your children.

36 In the submissions of Ms Pemmelar of 30 August 2016 there is a further brief outline of submissions which there describes the various attempts that were made to release you to Odyssey House. That is described in Exhibit F, which comprises two letters from Odyssey House, the first of which is dated 18 August 2016 and there is also a letter of 23 August 2016, the second addressed to the Magistrates' Court.

37 The first confirms that you were suitable to attend Odyssey House and a program to begin on 5 September 2016 and there was a request you remain in custody to that time to ensure continuity of care. You had previously been

admitted to Odyssey House on 10 March 2016 and you exited the program on 20 May 2016.

38 There was some optimism that on the second occasion you would be able to remain in Odyssey House and complete that program. Really that was not the case as events turned out and after some difficulty and some various court appearances and warrants being issued you are now before me for sentence.

39 I am informed that there are still matters for which you have to appear in the Magistrates' Court prior to Christmas and I understand you will be sentenced or you may or may not be sentenced with respect to those matters, depending on your plea.

40 With respect to issues of parity I am satisfied that whilst your partner was involved in some of your offending, that in the end the more significant offences you have committed on your own and ultimately it seems therefore issues of parity do not play any significant part with respect to your sentence today.

41 As well as those matters personal to you to which I have referred and referred in some detail, bearing in mind also particularly the matters that the High Court set out in *R v Bugmy*, particularly with respect to offenders who have suffered the sort of disadvantages that you have in life and how those disadvantages remain with people over time, and clearly it seems to me you are the very kind of person to which Their Honours addressed their sentencing remarks.

42 Accordingly you derive the benefit of the considerations that are set out in the case of *R v Bugmy*, given what can be regarded as your systemic deprivation and the living circumstances that you endured as a very young person. Clearly they have continued over time, and I think you have only ever been employed for a short time and that was some years ago. Apart from that your life seems to be bedevilled by matters of great personal crises, drug and alcohol addiction and homelessness.

- 43 Nevertheless, it seems to me that whilst the court has in the circumstances sought to offer you the opportunities of Odyssey House and it is clear that you have taken advantage of that on one occasion, in recent times for reasons explained by counsel this morning you were not able to remain there on this most recent occasion.
- 44 Notwithstanding the question of rehabilitation is always of great significance bearing in mind if there are any significant prospects, of course I must also bear in mind the principles of general deterrence which I find to be of considerable importance in a case such as this, involving as it does planned thefts on commercial premises, and where property of considerable value is taken specific deterrence is clearly a very great significance given your very, very long list of prior convictions which are all obviously relevant.
- 45 I must also consider the question of the protection of members of the community from you and bear in mind the likelihood of your reoffending, which I find to be considerable in light of your prior convictions and your recent behaviour in failing to remain at Odyssey House, and the fact that of course you have continued to commit thefts of the kind for which you fall to be sentenced today.
- 46 You can remain seated during the sentence, Mr Nicholson. These are all without doubt serious offences and it seems to me in the circumstances I have no alternative to the imposition of custodial sentences. I propose to sentence Mr Nicholson firstly on the two matters which are set out on indictment F13147832.
- 47 On the offence of burglary on that indictment there will be a sentence of imprisonment of 18 months and on the charge of theft on that indictment there will be a sentence of 12 months. On the summary offence of committing an indictable offence whilst on bail there will be a sentence of three months.
- 48 I order that three months of the sentence on the theft charge be served cumulatively on the sentence imposed on the burglary charge, and that gives

rise to a total effective sentence of 21 months.

49 The sentence on the indictment E13973880, on each of Charges 1, 3, 5, 7, 9, 11 and 13, the seven charges of knowingly deal with the proceeds of crime, there will be a two month sentence of imprisonment. On the charge numbers 2, 4, 6, 8, 10, 12 and 14, that is the seven charges of obtaining property by deception, there will be a one month sentence of imprisonment on each of those charges.

50 On Charge 15, the charge of burglary, there will be a sentence of 18 months' imprisonment. On Charge 16, the charge of theft, there will be a sentence of 12 months' imprisonment, and on Charge 17, the charge of theft, there will be a sentence of 12 months' imprisonment, and on the summary charge of contravening a condition of bail, there will be a sentence of one month's imprisonment.

51 Having regard to the issues of totality, and indeed bearing in mind the matters Ms Blakeney raised this morning with respect to the timing of the earlier charges and the period of imprisonment you received with respect to matters, I make the following orders, still dealing with the indictment number two.

52 I order that Charge 15 will be the head sentence, that is the sentence of burglary, 18 months, and I order that three months of Charge 16 and six months of Charge 17 be served cumulatively on Charge 15, and that one month on each of Charges 1, 3, 5, 7, 9, 11 and 13 be served cumulatively on the sentence imposed on Charge 15 and each other.

53 What that means is that on Charge 15 was 18 months, three on Charge 16, six on Charge 17 and one on each of Charge 1, 3, 5, 7, 9, 11 and 13. That gives rise to a total effective sentence of 34 months. I order that the sentences imposed on the two indictments be served cumulatively. That therefore gives rise to a total effective sentence of 55 months.

- 54 What I propose to do is to order the one non-parole period which I think is the appropriate thing to do, but you can all check as to whether that is appropriate or not, and there will be a non-parole period of three years. I note that with respect to these matters there is an agreed pre-sentence detention of 228 days served in respect of these matters and I direct that be recorded in the records of the court.
- 55 For the purposes of s.6AAA had you not pleaded guilty to these matters there would have been a total effective sentence of six years with a non-parole period of four years.
- 56 I think that completes the matters. The only matter that troubles me, apart from all of the matters that give rise to Mr Nicholson being here of course, with respect to the actual sentence are that, as I say, I have imposed a total effective sentence on one indictment, a total effective sentence on the other indictment, I have made them cumulative on each other and then set the one non-parole period.
- 57 You may need to look at that just to make sure that works, that is efficacious and lawful. I think it is. I do not think I need to make a non-parole period with respect to each indictment because it would not make a lot of sense doing that. I think the legislation, if I recall rightly, says you order the one non-parole period, and in any event, you have my thoughts and the various sentences.
- 58 I trust that is all readily understandable but, Ms Blakeney, what of course you can explain to Mr Nicholson why it is that I have in the circumstances ordered a parole period, because it seems to me that it is really a time for Mr Nicholson to make decisions about his own life and if he can convince the Parole Board in two and a bit years or thereabouts that he is a worthy candidate for parole, then so be it, he will have that opportunity. Anything further?
- 59 MS BLAKENEY: No, Your Honour.

60 MR ROPER: No, Your Honour.

61 HIS HONOUR: Thank you. As I say, Mr Nicholson, it is sad that it has come to this but there is always hope that in the future that things will change. Thank you, we will adjourn.

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