

IN THE COUNTY COURT OF VICTORIA

Revised
(Not) Restricted
(Not) Suitable for Publication

AT MELBOURNE
CRIMINAL JURISDICTION

CR 17-00235

DIRECTOR OF PUBLIC PROSECUTIONS

v

PETER MADUL

JUDGE: HIS HONOUR JUDGE O'CONNELL
WHERE HELD: Melbourne
DATE OF HEARING: 18 October 2017
DATE OF SENTENCE: 19 October 2017
CASE MAY BE CITED AS: DPP v Madul
MEDIUM NEUTRAL CITATION: [2017] VCC

REASONS FOR SENTENCE

Subject: CRIMINAL LAW
Catchwords: Confrontational Aggravated burglary – Home invasion —
Theft - Need for denunciation – General and specific
deterrence – Youthful offender;
Legislation Cited: *Sentencing Act 1991 Vic s 6AAA*
Sentence: Total effective sentence: Five years and six months
imprisonment. Non-parole period of Three years and three
months imprisonment.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Director of Public Prosecutions	Ms J. Fallar	Office of Public Prosecutions
For the Accused	Mr J. Hofman	Emma Turnbull Lawyers

HIS HONOUR:

1 Mr Madul, on 29 August 2017 after a five day trial, a jury found you guilty of the following charges:

2 Charge 1, that on 1 March 2016 you entered as a trespasser at 3 Sedgwick Court with intent to steal, and at a time of entering a person was then present and you knew that a person was present, or was reckless as to whether or not a person was then present.

3 Charge 2, that on the same date, you attempted to rob Xi Long Zhang and at the time had with you an offensive weapon, namely a knife.

4 Charge 3, that on the same date and place you stole cigarettes belonging to Xi Long Zhang.

5 Charge 4 was that at the same date you entered as a trespasser at 17 Sedgwick Court, Lynbrook, with intent to steal, and at the time of entry a person was present in the house and you knew that a person was present in the house, or you were reckless as to whether or not the person was then present.

6 Charge 5, that on the same date you stole a black Honda CRV Wagon, registration ZHI 613 belonging to Sunil Vaidyanathan.

7 Charge 6, that on the same date you stole a red Holden Barina, registration IGJ 3NK, belonging to Sunil Vaidyanathan.

8 In addition you have now pleaded guilty to the following further offence from indictment No.G10942254A, that at Dandenong on 6 April 2016 you stole a motorcar belonging to Phillip Walters.

9 Pursuant to s.242 of the *Criminal Procedure Act*, you also pleaded guilty to two related summary matters, those being that on 6 April 2016 you drove a motorcar whilst disqualified from driving, and that on that same day you drove a motorcar carelessly.

- 10 I must now sentence you in respect of these offences.
- 11 As to the matters the subject of the trial, I make the following findings of fact:
- 12 Shortly after 1 am on Tuesday 1 March 2016, Xi Long Zhang and his wife Nanzhen He were asleep in their bedroom at 3 Sedgwick Court, Lynbrook. Their 18-year-old son Bin Zhang was in his bedroom watching a movie. Both Mr Zhang and Ms He were awoken by you as you turned the master bedroom light quickly on and off a number of times. You were brandishing a kitchen knife and demanded that they give you the keys to their car. Ms He described what occurred through an interpreter in the following terms:
- "I was asleep, and I was on the side towards - facing towards the door, and then I heard some noise making by the knife knocking on the doorframe. And then there was light. So there are together five lights on the ceiling, so the downlights, five downlights. So the lights were turning on and off very rapidly. So the noise and the light woke me up, and I was so scared to be woken up to see a knife hovering over my head".
- 13 Ms He was visibly upset when describing this incident in her evidence at trial.
- 14 Bin Zhang came out of his room and saw you standing outside his parents' bedroom. His father alerted him to the fact you were holding a knife. Bin took a step back and heard you continuing to demand the car keys. He watched as you moved through the kitchen and out the back sliding door carrying a backpack, which must have contained nine cartons of Chinese cigarettes which you stole.
- 15 You had earlier entered the house through that door, which had been closed but left unlocked. Once you had departed, the residents of the house found an opened red wine bottle left in the bathroom. They also noticed that a kitchen knife was missing from the knife block.
- 16 Bin Zhang made a call to 000 at 1.49 am, about five or ten minutes after you had left 3 Sedgwick Court. Those circumstances constitute Charges 1, 2 and 3.

- 17 Sunil Vaidyanathan, together with his wife and two daughters lived at 17 Sedgwick Court, located about 50 to 60 metres from No.3. Mr Vaidyanathan fell asleep watching cricket shortly after 12 am. His wife and two daughters were asleep in another room. Sometime after 1.30 am you entered their house by accessing the backyard through a side gate. You then gained entry through an unlocked door into the garage, and from there into the house proper, through another unlocked door.
- 18 In the hallway of the Vaidyanathan's house was a wooden hook, on which two sets of car keys had been placed. Without waking the occupants, you took the car keys and used them to gain entry to a black Honda CRV, registration ZHI 613, which was parked inside the garage. You started the car, and using a remote control located in the car, you opened the garage door.
- 19 For reasons that are unclear, you drove the car into the driveway and then abandoned it. You left the knife you had obtained from 3 Sedgwick Court on the passenger seat of that car.
- 20 The Vaidyanathan's red Holden Barina, 1GK 3NK, was parked on the nature strip. You used the other set of keys to steal that car. It was later recovered by investigators approximately 13 days after this event, in a severely damaged condition.
- 21 Investigators were able to obtain an impression of a fingerprint, a left thumbprint, on the blade of the knife left in the black Honda. The preliminary report suggested that the thumbprint belonged to you.
- 22 At trial you took issue with the prosecution allegation that you were responsible for all of these offences. Ms Fallar, who appeared to prosecute, called expert fingerprint evidence from a Mr Matthew Fisher, to the effect that in his opinion the thumbprint was made by you. Ultimately that evidence was accepted, and the jury was satisfied beyond reasonable doubt that you were responsible for all six offences. I must sentence you now in accordance with their verdict.

- 23 In respect of indictment No.G10942254A and the related summary offences, on 6 April 2016 you were seen by two police officers driving a blue Kia motorcar, registration No.1EF 8IP, along Railway Parade, Dandenong. Police followed from a distance and after leaving sight of you, discovered you had collided into a power pole after rounding a bend in the road. The careless driving charge is constituted by the driving that resulted in that collision. You were injured, although it appears not seriously, and you were treated in hospital.
- 24 The summary of prosecution opening alleged that the car the subject of the charge had been stolen during an aggravated burglary on 22 March 2016. That matter is not before me, and you are not to be sentenced in respect of anything to do with that alleged aggravated burglary.
- 25 You had been disqualified from driving a motor vehicle or a period of two years on 18 September 2015.
- 26 No victim impact statements have been provided by the victims of your offending. However, I readily infer that Ms He, Mr Zhang and their son Bin, would have been terrified when you woke them in their own home in the middle of the night, wielding a large knife. They gave evidence at the trial and it was plain the effects of your conduct continue to haunt them.
- 27 Mr Vaidyanathan also gave evidence at trial, although he and his family remained asleep when you entered their home. It was clear they felt violated and extremely distressed by what you had done.
- 28 This is particular serious offending, which undermines the sense of safety and security people are entitled to feel in their own home. The fact that you chose to enter peoples' homes in the middle of the night is serious enough, but once inside arming yourself and waking the residents in order to threaten and rob them, as you did at 3 Sedgwick Court, is all the more disturbing.
- 29 I turn now to your personal circumstances. You were born on 27 August 1995

in Khartoum in Sudan. Your parents separated when you were an infant, however your parents re-partnered and you became part of a blended family that was described by the assessing forensic psychologist as being largely functional.

30 In 2005 your family was sponsored by an aunt to migrate to Australia. Mr Pearson who appeared on your behalf at trial and on the plea explained that at a young age, you became disconnected from your family. You were placed in residential care by the Department of Human Services, but you were often homeless. Accordingly, your education was limited. You attended school to year 10, and thereafter you had short periods of employment in low-skilled positions.

31 For a youthful offender you have an extensive prior criminal history, and although as Mr Pearson pointed out much of it was in the nature of "street offences" as he called it, and there is a good deal of duplication in the police documents setting out your history, there is nonetheless a pattern of offending characterised by violence.

32 One significant aspect of your personal history involved you serving 617 days in adult custody when you were only 16. It appears that on 5 July 2012 you aided and abetted the robbery of a pizza delivery driver. Shortly afterwards you were arrested and remanded in custody. Although you were 16 at the time you were mistakenly treated as an adult and remained in prison until you were sentenced on 7 May 2014. You were then sentenced to 12 months' imprisonment together with a community corrections order of 12 months. You had by that stage served 617 days in custody and were therefore released immediately.

33 There is no material available to me which adequately describes the effects that that experience must have had on you. However, it is likely in my view to have been very damaging. Mr Pearson submitted they it may be possible to take into

- account the time in adult prison not reckoned as served when you were sentenced on 7 May 2014, and he submitted the principle to be found in the decision of *R v Renzella* [1997] 2 VR 88, may have some application.
- 34 In my view, that principle does not sanction previous time in custody of this kind being treated as a bank balance from which an offender might make withdrawals in respect of unconnected offending.
- 35 Although I find that I cannot take the previous, unused pre-sentence detention into account in these circumstances, I nonetheless regard what happened to you at this time as a very significant feature of your personal history.
- 36 On 18 September 2015 you were dealt with for affray and assault in company, together with some driving offences, and received a total effective sentence of eight months imprisonment with 220 days as reckoned as time already served. Mr Pearson explained that you were released from that sentence in October of 2015. By that stage you had become further estranged from your family, you had no real supports, and there was a level of drug use, and you continued to live a disconnected life as Mr Pearson described it. It was put that these circumstances provided the setting in which this offending occurred.
- 37 The forensic psychologist Dr David Ball provided a psychological assessment dated 28 September 2017, which was tendered by your counsel on the plea. Dr Ball noted that you are now 22 years of age and impressed as an immature person with a limited capacity for generally good judgment. I note that you were 20 years of age at the time of this offending.
- 38 You acknowledged to Dr Ball intermittent use of cannabis, cocaine and methamphetamine, but suggested that this had not affected anything in your life. You told him that you did not believe that any rehabilitative programs would be of relevance to you.
- 39 In terms of diagnosis, Dr Ball opined that:

"Mr Madul satisfies the DSM-5 diagnostic criteria for severe stimulant cannabis and alcohol use disorders in sustained full remission in a controlled environment. As stated above, he fell in with negative peers during his mid-teens, who introduced him to substances and crime. Mr Madul presents with a history of conduct disorder and criminality, comorbid with a raft of antisocial personality features that satisfy the DSM-5 diagnostic criteria for antisocial personality disorder. I consider his disorder to be severe and chronic".

- 40 Dr Ball concluded that you will require intensive and structured drug relapse prevention treatment. You will also require intensive and structured treatment to address the antisocial aspects within your personality.
- 41 Ms Fallar submitted that the evidence at trial indicated that these were prevalent offences that require emphasis on general deterrence. She submitted that the manner in which you woke and threatened the victims at 3 Sedgwick Court was deeply concerning. Further, your past history of offending, and particularly violent offending, requires emphasis on specific deterrence and protection of the community.
- 42 Mr Pearson on the other hand emphasised that you were 20 at the time of the commission of these offences and remain at 22, a youthful offender, for which the sentencing purpose of your rehabilitation should be emphasised. He also pointed to your difficult history and the likely damaging effects of being placed in adult custody at the age of 16. To argue that you had been severely disadvantaged and should be given every opportunity to turn your life around. He submitted that any sentence imposed should allow for a significant period on parole, where you could receive the intensive and structured treatment envisaged by Dr Ball.
- 43 I accept Ms Fallar's submissions as to the emphasis required on general deterrence. I also accept that both personal deterrence and protection of the community are important purposes in the formulation of this sentence. Everyone should have the right to feel safe in their own home, and the sentence that I will impose in part seeks to vindicate that right.

- 44 There is little evidence of remorse, although a letter provided to me this morning suggests now that you do have some insight into the consequences of your offending.
- 45 Your prospects for rehabilitation, at least on the strength of Dr Ball's diagnosis, are not greatly encouraging. Nonetheless, I accept that you are a youthful offender who has been severely disadvantaged in your formative years, and that is particularly so, having regard to the regrettable fact that from the age of 16 you mistakenly spent about two years in adult prison. Given that background and your age, the sentence imposed should also seek to facilitate your rehabilitation to the extent that that is possible in all of the circumstances.
- 46 Mr Madul, would you mind standing, please?
- 47 You will be sentenced as follows:
- 48 On Charges 1, 2 and 3, being aggravated burglary, attempted armed robbery and theft of a motor car at 3 Sedgwick Court, you will be sentenced to an aggregate term of imprisonment of four years and four months.
- 49 In respect of Charges 5, 6 and 4, being aggravated burglary and two charges of theft of a motorcar, you will be sentenced to an aggregate term of imprisonment of two years and nine months.
- 50 In respect of indictment G10942254A, being theft of a motorcar on 6 April 2016, and the related summary offence of driving whilst disqualified, you will be sentenced to an aggregate term of six months. On the related careless driving charge, you will be convicted and fined \$300.
- 51 I will order that 12 months of the aggregate sentence imposed for Charges 4, 5 and 6 on the trial indictment be served cumulatively upon the aggregate sentence imposed in respect of Charges 1, 2 and 3 on the trial indictment.
- 52 I further order that two months of the aggregate sentence imposed in respect

- of indictment G10942254A be served cumulatively upon the aggregate sentence imposed in respect of Charges 1, 2 and 3 on the trial indictment.
- 53 The total effective sentence imposed is five years and six months' imprisonment. I will fix a non-parole period of three years and three months' imprisonment.
- 54 I further order that you will be disqualified from obtaining a license for a period of 18 months. Pursuant to s 6AAA of the Sentencing Act, I declare that but for your plea of guilty in respect of the charge and related offence on indictment G10942254A, you would have been sentenced to nine months' imprisonment.
- 55 I further declare that you have served 561 days by way of pre-sentence detention referable to this offending.
- 56 I will not order any stay in respect of the \$300 fine.
- 57 You can take a seat for a moment, Mr Madul, if you would.
- 58 Mr Hofman, Ms Fallar, are there any other orders required?
- 59 COUNSEL: No, Your Honour.
- 60 HIS HONOUR: All right. Mr Madul, Mr Hofman will come and explain the effect of all that to you so that it is clear, but you may go now with the officers there. Thank you.
