



QUEENSLAND COURTS AND TRIBUNALS

TRANSCRIPT OF PROCEEDINGS

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DISTRICT COURT OF QUEENSLAND

CRIMINAL JURISDICTION

JUDGE HOLLIDAY KC

Indictment No 630 of 2024

THE KING

v.

[REDACTED]

Defendant

SOUTHPORT

10.37 AM, TUESDAY, 28 JANUARY 2025

DAY 1

SENTENCE

Any rulings in this transcript may be extracted and revised by the presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: You are being sentenced by me today for one offence of burglary whilst armed by breaking, a domestic violence offence, which has a maximum available penalty of life imprisonment.

5

You pleaded guilty to the charge such that the Crown accepts that it is an early plea, and I take that plea into account as a factor in your favour and reduce the sentence that I would otherwise have imposed by reason of the plea.

10 The facts have been reduced to writing in a statement of facts. I know that the Crown has summarised it, but it is incumbent upon me to summarise it again as part of these remarks, and I do so now. You and the complainant were in a relationship for five years before you separated in March 2023. The complainant lived at an address with your two children. On the 4th of April 2023 a protection order of five
15 years duration was made in the Southport Magistrates Court naming you as the respondent and the complainant as the aggrieved. It had only the one condition to it. On the 12th of December 2023 you were charged with contravention of that order and released upon conditional bail from the Coomera Police Station. The bail
20 undertaking included the condition that you not go within a hundred metres of the complainant's address. All of that is by way of background only and also, where it is relevant, to set out features of your criminal history.

On the night of 18 December 2023 the complainant was home alone. She received some messages from you. The tenor of the messages was paranoid, and you accused
25 the complainant of having another man over. The complainant had been out for dinner with a male friend that evening, but he did not stay over. Again, that is by way of background only to what then occurred, which is that at 5.50 am on the 19th of December 2023 the complainant was asleep in her bed. You drove to the complainant's home, jumped over the side fence into the backyard. This was in
30 contravention of your bail undertaking, and you have been sentenced for that.

You went around to the sliding glass door that separated the complainant's bedroom from the back deck area and banged on the glass. You yelled at the complainant to open the door. Your banging and yelling woke the complainant up. The
35 complainant opened the blinds covering the sliding glass door, and she saw you holding a black gun, or what she thought was a black handgun, which you were waving around. The complainant observed you to be drug affected.

The statement of facts makes clear that the Crown cannot prove that the handgun was real and operable, and the sentence proceeds on the basis that it was a replica. When
40 I come to summarise your legal representative's submissions, he explains what, in fact, that item was. However, as the statement of facts makes clear, the complainant did not know it was a replica at the time of the offending.

45 You yelled at the complainant, "Open the door. Where is he? Where is he?" The complainant said to you, "What the fuck are you doing? What are you trying to achieve by being here with a gun? I'm not opening the door." You said or yelled,

“Open the door or I’ll break it.” You pulled over one chair from the outdoor setting and sat down facing the complainant’s bedroom. You put the gun up to your chin. You said words to the effect of, “I hope he makes you happy. I’m done.” You stood up from the chair, paced around, before sitting back down on the chair again. You
5 continued to insinuate that you would kill yourself if the complainant did not open the door.

The complainant ended up calling triple O. As the complainant was on that call alerting the operator that you were trying to get into the house, the complainant heard
10 the glass sliding door smash. You entered the complainant’s home through that broken glass sliding door which you had smashed. You paced through the bedroom, paced through the home, looking to see if there was anyone else there. It is the Crown case, which you accept, that you entered the complainant’s home armed with what turned out to be a replica gun, looking to confront the complainant’s male
15 friend that you believed to be inside the complainant’s home. You had an intention to commit the indictable offence of threatening violence.

After you searched the complainant’s home and realised that there was no one else there, but for the complainant, you sat down on the couch in the living room. You
20 repeated threats to kill yourself. The triple O operator, who was still on the phone with the complainant, instructed the complainant to lock herself in the bathroom, which she did. You fled the complainant’s home with the handgun through the front door and drove off.

25 Police arrived a short time later. When police were present you continually called the complainant’s mobile phone. The complainant answered one of these calls, and you also messaged her, including saying that you had put a “track” on the male friend’s car and that you were sorry about the sliding door. You also said you knew who she was with that prior evening. Again, that is there for context only. You are
30 only being sentenced for the facts in relation to count 1. Blood was located in the complainant’s home on the couch, indicating that you had been injured as a result of the smashing of the door, but it is not known to what extent you were injured. That still remains unknown in these sentencing proceedings.

35 On the 19th of December 2023 police filed an application to vary the protection order. You continued to contact the complainant in breach of that order, and you were dealt with in September 2024 for that conduct. You were fined, and no conviction was recorded.

40 On the 20th of December 2023 a temporary protection order was made adding further conditions, including a non-contact condition. An arrest warrant was issued for your arrest on the same day. On the 31st of December 2023 you were located, arrested and remanded in custody. Whilst you were remanded at the Arthur Gorrie Correctional Centre you attempted to contact the complainant again. That was one of the matters
45 for which you were dealt with in September 2024. On the 21st of February 2024 you were granted bail. On that same date the temporary protection order was made into a

permanent protection order, and that is to expire on the 20th of February 2029, and I have declined to vary that order today.

5 I make it abundantly clear again that I am sentencing you only for the facts of count 1. The rest that I have detailed is by way of background only and, where relevant, has set out details of your criminal history.

10 I take into account the factors mentioned in section 9(1) of the Penalties and Sentences Act. The purposes for which I am imposing this sentence are: to punish you to an extent and in a way that is just in all the circumstances; to provide any conditions which I consider will help you to be rehabilitated; to deter you and others from committing this or a similar offence; to make it clear that the community, acting through the court, denounces the sort of conduct in which you were involved, and to protect the Queensland community from you. I have regard to the relevant
15 factors in section 9(2) of the Penalties and Sentences Act, although section 9(2)(a) of that Act, namely that a sentence of imprisonment should only be imposed as a last resort, does not apply. Instead, the factors as detailed at section 9(3) of the Act apply, and I have regard primarily to those factors. It is an aggravating factor that this is a domestic violence offence.

20 As for your personal circumstances, you were 29 at the time, and you are 30 now. You have a criminal history. In 2014 you were sentenced to 18 months' imprisonment for entering a dwelling with intent at night, assault occasioning bodily harm and assault occasioning bodily harm in company. You had spent 36 days in
25 custody, and your parole release was set as at the date of sentence. You were also sentenced to probation for other offending.

In 2015, you were sentenced to three months' imprisonment cumulative upon the sentence I have just detailed for another burglary offence which pre-dated the 2014
30 sentence. Importantly, to my mind, there was then a significant gap in your criminal history, nothing, in fact, until 2024 when you were sentenced for breach of bail to a fine and no conviction recorded. And then, which I have already alluded to, in September 2024 sentenced to fines and no conviction recorded for contraventions of the domestic violence order as well as minor drug offending.

35 There is a pre-sentence custody certificate which sets out that you have spent 53 days in pre-sentence custody in relation to this offence from the 31st of December 2023 to the 21st of February 2024.

40 Your background has been explained in the written submissions of your legal representative. You had what can be described as a dysfunctional upbringing. Your parents were heroin abusers, and you were first introduced to methylamphetamine when you were 13 years old. You were diagnosed with ADHD as a child. You received some treatment, but your behaviour did not change. You ended up leaving
45 home when you were 13 years of age. You lived with a girlfriend who was 21. You dropped out of school. Your first job was when you were aged 15. You eventually

started working with a scaffolding company and started your own business in 2019. Unfortunately, that was liquidated in 2023. With the conclusion of the relationship with the complainant, it is said that you fell back or into heavy use of methylamphetamine which contributed to this offending.

5 Since this offending – and this is very relevant to the sentence today and the reason why I am not going to return you to custody today – is the efforts you have made at rehabilitation since being on bail for this offence. You enrolled in the gambling intervention program. You attended four counselling sessions. You enrolled in a
10 domestic violence program, and you have completed 19 of the 27 sessions. You have been drug free since May 2024, and there is drug testing to certify that to be the case. You have completed a Triple P parenting program and an anger management program. You hope to enter into the Transformations peer-to-peer residential
15 program, and I have had an update in relation to that from your legal representative today. Certificates and letters to support the courses and programs you have completed, or you intend to engage in, have been tendered by your legal representative.

20 There is also a letter from the complainant which is written in support of you. You are very fortunate to continue to have her support given the nature of this offence. She describes that you have potential, when you are sober, and your addictions and trauma have led to significant personal strife and mistakes that you acknowledge. You have assisted others, and you have compassion and generosity. She describes that those are some of your defining characteristics but have also been your downfall
25 at times. Importantly, she has noticed a positive change over the past year; you have bonded with your daughter. She says that you are remorseful for the offence, and you have a genuine commitment to rehabilitation. She spoke of the courses you have engaged in consistent with what has been tendered today. She says these words, “I am hopeful that with continued support, opportunity and maintained accountability
30 Byron can keep moving in a positive direction.”

The Crown has made written and oral submissions. They stress your relevant prior convictions. They summarise the facts relevant to the 2014 offending which is that it was a home invasion motivated by a desire to recover money that you perceived as
35 being owed to you. The violence was inflicted on the complainant and children in the house, but they were minor injuries. It is submitted that the offending is serious due to it being domestic violence offending. You also wielded a replica weapon, whilst threatening to use it to kill yourself, and the complainant had no reason to think it was not real. The intrusion was into the complainant’s home at night. You
40 smashed the glass door to gain entrance, and it would have been objectively terrifying.

He submits that personal deterrence is also relevant as you have committed burglaries before, and you have breached the protection order after the offence before
45 the court. He further submits that general deterrence and community denunciation are relevant. He, though, very fairly, accepts that rehabilitation remains relevant and, particularly, whether you should be returned to custody largely turns on whether you

have demonstrated satisfactory steps towards rehabilitation, and, in those circumstances, if the court is so satisfied, the Crown accepts that it is open for you to be immediately released on parole.

5 He relies on the two decisions of R v Hardman [2001] QCA 15 and R v Heang [2016] QCA 195 to support his ultimate submission that the appropriate sentence is one of 18 months to two years. He makes the point that you have not yet served enough time in custody on the basis that ordinarily a person would serve one-third before release. He said, as I have already said, that it is open to return you to custody
10 but also, if I am satisfied as to the rehabilitative steps, it is open to release you on parole today.

Your legal practitioner has provided detailed written submissions and supplemented those to the extent he needed to today orally. He explained that you were labouring
15 under the extreme effects of methylamphetamine at the time of the offence, which had been consumed over the preceding few days; you were plagued by paranoid thoughts about the complainant and went to see her. You jumped the back fence and retrieved a gel blaster from the bar in the backyard, and that is the weapon referred to in the statement of facts. You hoped the complainant would let you in and, when she
20 did not, you decided to break in and confront her about your perceived view that she was with another man. Your legal representative stresses that you never intended to hurt the complainant.

He submits that the appropriate sentence is one of 18 months' imprisonment, with
25 parole release today, with a declaration of time served, because that would give sufficient recognition to all of the features here, including the steps that you have taken towards rehabilitation.

This is clearly a serious offence. It involves you breaking into your ex-partner's
30 home whilst armed with a replica gun. The complainant should have been entitled to feel an absolute sense of safety in her own home. General deterrence and protection of the community are relevant considerations, as is personal deterrence given your history. However, as I have already noted, it is relevant that there is about a 10 year gap in offending as per your criminal history.

35 I also accept that there are powerful features in mitigation here, including your early plea. I accept that you are remorseful. You spent just under two months in pre-sentence custody. I am satisfied that you have prospects of rehabilitation, most particularly because, since you were released on bail, you have made considerable
40 efforts to turn your life around; you have completed courses and programs; your ex-partner has written a letter in support of you, and you have been abstinent from illicit drugs.

I accept that the appropriate range is 18 months to two years' imprisonment. The
45 real question is whether you should be returned to custody. I must arrive at a just sentence. To my mind, it is not in your or the community's best interest to return

you to custody today. However, as you know, you will be subject to parole. If you breach that parole in any way then your parole will be suspended, and you will be taken immediately in custody. There is nothing that any legal practitioner will be able to say for you. I am giving you an opportunity today to continue your
5 rehabilitation in the community. If you blow that opportunity, you will find yourself back in custody.

So this will be the order. A conviction is recorded. I order the defendant be imprisoned for a period of 18 months. I order that the date the defendant be released
10 on parole be fixed at the 28th of January 2025. It is declared that 53 days spent in pre-sentence custody between the 31st of December 2023 and the 21st of February 2024 be deemed time already served under the sentence. This is a conviction for a domestic violence offence. I refer exhibit 7 to the parole authorities. You must report by 4 pm today to the parole authorities. If you fail to do so you will be
15 unlawfully at large for the purpose of the Corrective Services Act and be liable to be taken immediately into custody.

Is there anything further?

20 MR REID: No, your Honour.

MR McMILLAN: No, your Honour.

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REVISED