IN THE COUNTY COURT OF VICTORIA

Revised Not Restricted

Suitable for Publication

AT MELBOURNE CRIMINAL DIVISION

Case No. CR-18-00500

DIRECTOR OF PUBLIC PROSECUTIONS

v

BRADLEY JOHNSON PETER JONES

JORDAN TURNEY

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JUDGE:

HIS HONOUR JUDGE STUART

Melbourne

30 April 2019

DPP v Johnson&Ors [2019] VCC 576

WHERE HELD:

DATE OF HEARING:

DATE OF SENTENCE:

CASE MAY BE CITED AS:

MEDIUM NEUTRAL CITATION:

REASONS FOR SENTENCE

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Catchwords:

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APPEARANCES:

Counsel

Solicitors

For the Director

Mr C. McConaghy

For the Accused Johnson For Accused Jones

For Accused Turney

Mr A. Marshall Mr G. Barns

Ms A. Burnnard

VICTORIAN GOVERNMENT REPORTING SERVICE

7/436 Lonsdale Street, Melbourne (Prepared by Legal Transcripts Pty Ltd) 200561

HIS HONOUR:

1 Peter Jones and Bradley Johnson, you have both pleaded guilty to one charge of home invasion and one charge of intentionally causing injury. The charge of home invasion carries with it a maximum penalty of 25 years, the second- highest penalty set by Parliament. The charge of intentionally cause injury carries with it a maximum penalty of 10 years imprisonment. You, Jordan Turney, have pleaded guilty to one charge of aggravated burglary which also carries with it a maximum penalty of 25 years imprisonment, as well as a second charge of intentionally cause injury.

2 You, Peter Jones, at the time of these offences were 22 years of age. You resided in Cranbourne East with your fiancé Stephanie Zuel. You, Bradley Johnson, were 23 years of age at the time of offending and also lived in Cranbourne. And finally, you, Jordan Turney, were, at the time of the offending, also 23 years of age. Your victim, Jacob Perger, was 24 years old at the time of the offending and lived in Cranbourne East. You, Peter Jones, employed both your co-offenders, Bradley Johnson and Jordan Turney, as roof tilers. As will be revealed, your roof tiling business was one which you purchased from your previous employer when he retired due to ill health.

3 Around 13 August 2017 your partner of some eight years told you, Mr Jones, that she had had an affair with the victim Mr Perger. This caused you to be very upset and you left the house that you shared with your partner, not returning until the next day.

4 Some 10 days later, on Wednesday, 23 August 2017, you arrived at 17 Waterside Drive with Mr Johnson. You told your partner, Ms Zuel, that Johnson was with you as you were going to pay your victim a visit. At some stage the two of you had formed a plan to go to the victim's house to seek retribution for his having an affair with Ms Zuel. After about 20 minutes you left with Mr Johnson in your Holden Commodore and went to meet with Jordan Turney where he lived, also in Cranbourne East. Mr Turney was not aware of

the plans that the two of you had made. At Mr Turney's address the three of you were drinking beer and it is plain from the pleas that all three of you were considerably effected by alcohol, if not other drugs as well. You then left Mr Turney's address in the Holden Commodore and went and purchased some Toohey's Extra Dry beer after which, at about 9.38 pm, you drove around the Cranbourne East area. You were seeking to locate the victim's vehicle, which you did indeed find at Cartwright Grove in Cranbourne East. The car was parked nearby and the three of you walked to the victim's address or near it.

5 After arriving at the victim's property, you Mr Johnson, turned off the power to the premises at the power board on the house. You then proceeded to kick the front door of the premises, causing the lock to break and the door to open. You and Mr Jones then both entered the house with one or more metal poles. That entry is the subject of Charge 1 on the indictment in relation to the two of you, home invasion. The two of you then entered the front master bedroom where your victim was lying on the bed apparently asleep. You then began hitting him repeatedly with metal poles. You, Mr Turney, were not on the property at the time that Mr Jones and Mr Johnson entered but you were nearby.

6 The victim had indeed been asleep on the left side of the bed when he was suddenly awoken when someone hit him on the head with a hard object. He didn't know what he was hit with but the person was swinging the object like a bat. He immediately put his arms up to protect himself and started punching and kicking out. He was hit several more times with hard objects to the left arm and elbow and also to the eye and mouth. After hearing this banging you, Mr Turney, decided to enter the property and the bedroom and assisted in the assault. Your entry into the property on the indictment as it relates to you is the subject of Charge 1 of aggravated burglary.

7 You then, having arrived at the bedroom door, stood in the bedroom door. You would have had a clear view of what was happening to your victim, being attacked by the other two, Mr Jones and Mr Johnson. You could have left it at

that but you did not. You then joined in on the attack upon this man, in his own bed, by going to him and striking him with a closed fist once to his head. You, at that time, were aware that both the co-offenders were armed with weapons. And so you entered the house with an intention to assault (Charge 1: Aggravated Burglary) and that is precisely what you did (Charge 2: Intentionally Cause Injury).

8 The victim could see that there were three people in his bedroom, two of them hitting him with hard objects whilst one was standing back – you Mr Turney – near the door to the room. The room was dark with no lights on but he could make out the shapes of all three of you. He was unable to see what you were wearing and he was concentrating on protecting himself from these cowardly attacks upon him.

9 During the assault upon him, he was able to connect a punch to one of the persons present, after which he saw you, Mr Turney, standing near the door. He saw you come over and hit him to the head with the closed fist. At that point he lost all vision. He was still on the bed and he reached out and grabbed his lamp from the left bedside table and threw it. He believes that the lamp hit one of you, as he heard it connect. He then heard a male voice saying, 'Let's go, let's go', and another male voice also said, 'Let's go'. The three of you then ran from the house, leaving the front door open.

10 From the house, the three of you ran east along Cartwright Grove and then north along Omeara Crescent, returning to the Holden Commodore. The three of you then drove to Mr Turney's house. Before driving off in the vehicle, both you, Mr Jones and Mr Johnson, dumped the jumpers or hoodies that you had been wearing, in the vacant block near to where the Holden Commodore was parked.

11 Following the assault, your victim walked from his home and went to a neighbour's, calling out to the occupant that he had been bashed. That

neighbour then contacted police and ambulance. A second neighbour came out of her house and assisted your victim until the ambulance arrived. He was taken to the Dandenong Hospital where he received treatment for a fractured eye socket, suspected fractured skull, which did not eventuate in any underlying skull fracture, laceration to the head, six fractures in his left arm, a dislocated left elbow, broken right little finger, and bruising to his lower back. Not insignificant injuries arising, not only from him trying to protect himself from the blows, but also blows direct to him.

12 Earlier that night, after you, Mr Jones, and you Mr Johnson, had left Mr Jones' address, your partner Ms Zuel, called two of her friends for assistance as she was concerned with what was happening. She then, after some other arrangements had taken place, contacted you Mr Jones, and arrangements were made to return home. Mr Johnson asked Ms Zuel if he could be dropped at his house. After Mr Johnson was dropped off, you Mr Jones, started to get upset and said, 'What have I done'. After arriving home you were still upset and repeatedly said, 'I've got kids. What have I done?' The gravity of your offending therefore soon came home to you. It is a pity you did not reflect earlier on the plan and abandon it, rather than going ahead and attacking this man in his own home, in his own bed asleep. It is to your credit, Mr Jones, that you immediately after the events realised the gravity of your offending.

13 You told your partner Ms Zuel, that you had gone to the victim's house with Mr Johnson and Mr Turney, turned off the power, and that Johnson had smashed down the door by kicking it. You told her further that you all went into the victim's room where you found him asleep in bed, that they all started hitting him. You said to her that you were hitting the victim on the body and arm and that Mr Johnson was hitting him to the face and head and that then they left. Ms Zuel asked you how bad the victim was, to which you replied, 'Probably not good'.

14 In so far as you are concerned, Mr Johnson, your Facebook Messenger messages have been provided to the police by Tara East, the conversations

between you and her. At 11 pm that very night, Wednesday, 23 August, you sent a message saying, 'I was at joiunt all night you seen me till 1 am, babe yeah? Love you’ ‘your house.' Some four days later on 27 August, she received a Facebook message from you which included a screenshot of a photo of the victim in hospital with bandages on his head and arm and has written letters in capitals 'LOL' above the photo where you had sent the screenshot, 'Laugh Out Loud', as we all know that acronym to be. She replied to you, 'I no cunt I saw it already dude. It's actually quite sad man. U should feel fkn horrible.' To which you replied, 'ahahaha fuck the cunt'.

15 The day after the events of the 23rd, at 12.45 on Thursday the 24th, you, Mr Johnson, went to Ms East's home address, where she noticed cuts, swelling and bruising to your right hand. She asked you what had happened and you told her that you had gone to the victim's house with Mr Turney to 'punch the crap out of’ him'', saying that you went straight to the electricity box and turned off the power because you wanted the victim to come outside. The regret, the insight, that Mr Jones had shortly after returning to his home were not reflected in your approach to what you had engaged in. It would seem that to some degree you revelled in what you had done.

16 On 11 October 2017 police arrested you, Mr Jones, and conducted a record of interview. In answer to a number of questions, you said, 'Yeah, a couple of weeks before that I found out my partner was cheating on me and, I don't know, I guess it took me a while to figure out how to deal with it and I thought the best way was to go knocking on his door and see him face to face, but he didn’t answer so I kicked the door down and started bashing him.' You also said, '…just, he didn't answer, I turned the lights off, turned the power board off, open his door- started kicking his door down, door popped and I just ran in there and started hitting him.' Question: 'Yep. Did you have anything with you at the time?' Answer: 'Just a pole'. Question: 'Okay, and from where you go inside, explain to me what happens.' Answer: 'He was just laying down on the bed,

started screaming, I was just smacking away.' Question: 'When you - smacking away, what with?' Answer: 'The pole'. You continued on and said: 'I was with two other people but I don't know who they were or anything. I was kind of – I was just kind of talking bout how I felt and what I wanted to do and that and - I don't know, they – I guess I kind of dragged ’em into it.' And finally, question: 'What did you say that you wanted to do?' Answer: 'Go and bash him'.

17 And so, in relation to you Mr Jones, you continued the approach of having insight and regret for what you had done. Your record of interview was wholly confessional. Indeed, you took the blame for what Mr Johnson did in turning off the power and in kicking in the front door.

18 On that same day, 11 October 2017, police also arrested you, Mr Johnson, and conducted a record of interview during which, in the initial part of the interview, you denied any involvement in assaulting the victim. Some two hours later a second record of interview was commenced at 10.08 pm. During that interview you made admissions concerning the offending that had occurred, including the following. Question: '…or is there anything else you want to say or…?' Answer: 'Yeah. I kicked in the door. I done everything.' Question: 'We spoke earlier about the lights going off. Did you do that?' Answer: 'Yeah'. Question: 'We spoke earlier about he(sic) lights going off. Did you do that?' Answer: 'Yeah'. Question: 'O.K. Where were your feet in relation to the doorway?' Answer: 'Probably just on the – like, not into the house. I was still standing on the outside teetering in.' You continued later on saying: 'I did not step in.’ ‘They both had poles.’ and ‘…I thought they need their weapon, like, you know, to scare him a bit but they took it that extra length…' You otherwise denied assaulting the victim or entering his room. You Mr Johnson, were particularly careful in making your admissions to deny actually entering the premises and you knew precisely why for that would make you guilty of burglary.

19 You too, Jordan Turney, were arrested on that date and a record of interview

was also conducted. During the course of it you made admissions concerning your role in the offending, including the following: 'From there went for a drive, pulled over, that's when we entered the premises and I just ran back after I heard - like, as soon as I heard screaming and stuff like that.' Question: 'So you said a “couple of steps”, how far would you say you went in the house?' Answer: 'I wouldn't even say a metre in.’ You otherwise denied the assault on the victim or entering his room.

20 In the often cited decision of the Court of Appeal in *Hogarth v The Queen [2012] VSCA 302*, in the joint judgment of Maxwell P and Neave JJA, and Coghlan AJA, Their Honours dealt with the charge of aggravated burglary. The charge that you Mr Turney has pleaded guilty to. What their Honours said in that joint judgment is apposite also to the recently enacted offence of home invasion. At paragraph 34 their Honours wrote:

'The Director’s submission stated — correctly — that the offence of aggravated burglary has been viewed by the courts as an extremely serious offence. The submission set out the following judicial statements:

Aggravated burglary is an extremely serious offence which would normally attract a substantial sentence of imprisonment.

This court has on a number of occasions stated that the premeditated nocturnal invasion with criminal intent of a person’s home will always be regarded as extremely serious. Where, as here, that invasion has been effected for the achieved purpose of raping the occupant, it is, in my mind, unthinkable that the imposition of condign punishment would not follow.

The community views offending of this kind as extremely serious and expects the courts to impose sentence accordingly.’

21 Clearly here the offending was not such as to rape the occupant, but rather, in each of your cases, to assault your victim.

22 Their Honours continue at paragraph 56, writing:

‘Given the intrinsic seriousness of this type of offending, these are surprising findings. Confrontational aggravated burglary is not necessarily any more serious than (say) the same offence when committed in relation to an intimate partner or with intent to commit a sexual offence. Offences of the latter kind are likely to be particularly terrifying for victims. But it seems improbable that sentences in the ‘confrontational’ category should be ‘skewed towards lower- end sentences compared with all other categories’. It must be recalled that the stated intention of the increase in the maximum penalty was to ‘send a

message’ that ‘home invasion style offences ... will not be tolerated’. Sentencing practice as described by the Council would seem not to have met that objective.'

Their Honours were of course there speaking to the increase in the maximum sentence for aggravated burglary from 15 years to the 25 years which is applicable now.

23 In a further decision of the Victorian Court of Appeal in the *Director of Public Prosecutions v Andrew Meyers [2014] VSCA 314*, in the joint judgment of Maxwell, Redlich and Osborn JJA, their Honours deal with the issue of assessing the seriousness of a particular incident of aggravated burglary, saying in paragraph 47 the following:

‘Determining the sentence to be imposed for any particular offence of aggravated burglary will in large part depend on a careful assessment of the (relative) seriousness of the offence. There was argument on the appeal about how the gravity of this particular instance of aggravated burglary

In our view, the following considerations will ordinarily be relevant to such an assessment:

• the offender’s intent at the point of entry (whether to steal or commit assault or cause damage);

• the mode of entry (eg, by forcing a door or breaking a window);

• whether the offender was carrying a weapon;

• whether the offender was alone or in company;

• the time of day at which the burglary took place;

• what the offender knew or believed about who would be inside and/or about where the person(s) would be; and

• whether the offender was someone of whom the victim was particularly frightened.

The particular purpose which the offender has in mind at the point of entry is a significant feature going to the gravity of the offence. Of course, the intent on entry is conceptually distinct from what occurs after entry, but the offender’s conduct once inside the premises will usually enable inferences to be drawn about the intent on entry.’

24 It is useful at this point to turn my attention to the new provision of the offence of home invasion which Parliament, as I have said, has set a maximum penalty of 25 years in prison. The elements of home invasion reflect certain aggravating features that are seen in the incidence of aggravated burglary. And so those elements include:

(1) entry in company of one or more others persons;

(2) that there was an offensive weapon;

(3) that a person in fact was present in the home.

Here both elements that would otherwise be categorised as aggravated features are present, that is, s.77A of the *Crimes Act* 1958 reveals. Relevantly, sub-s.1 of that section reads:

'A person commits a home invasion if –

. . .

(c) either –

(i) at the time the person enters the home the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive or

(ii) at any time while the person is present in the home, another person (other than the person referred to in paragraph (b)) is present in the home.'

25 It is necessary therefore for me to assess the gravity of the offending. Turning first to Mr Jones and Mr Johnson, there are a number of features of this offending which overlap as to the charge of home invasion and also in relation to the charge of intentionally causing injury. I am particularly mindful of the need to ensure that there is not double punishment in relation to the charge of aggravated burglary and intentionally cause injury as it relates to you, Mr Turney, or home invasion and intentionally cause injury as it relates to you, Mr Jones and Mr Johnson.

26 What then do I see as the features that evidence the gravity of the offending concerning, you Mr Jones, and you, Mr Johnson.

(1) This was a premeditated plan to assault the victim in his own home;

(2) This was a considered enterprise, not in any way spontaneous. It involved, in that regard, finding the victim, arming yourselves and entering the premises in order assault him;

(3) Each of you armed yourselves with poles in order to assault your victim;

(4) The home invasion occurred late at night;

(5) There were two of you;

(6) Power was switched off in order to facilitate the attack on your victim by ensuring surprise;

(7) The front door of his home was kicked in;

(8) Your victim was in his own home, in his own bedroom, in his own bed, asleep;

(9) By committing the assault which is the subject of Charge 2, you cowardly attacked your defenceless victim with poles, and finally,

(10) He suffered considerable injuries as a result of the assault that were considerable.

27 Turning to the gravity of the offending that you engaged in Mr Turney. You were not party to any such planning or preparations. However, having heard the noises coming from the home, you then -

(1) Came to that premises;

(2) Entered the premises with an intent to assault;

(3) You came to the bedroom doorway, saw the joint attack on the victim with weapons and then decided to join in, and finally,

(4) You did so by striking your victim with a clenched fist, one blow to his head whereupon he lost vision.

28 Each of you have a criminal record but I put those records entirely aside as they are not relevant, in my view, for the sentencing purpose that I must engage in. Suffice to say that, in relation to the home invasion that you, Mr Jones, and you,

Mr Johnson, engaged in, it was a particularly serious example of such for home invasion. Insofar as the aggravated burglary that you engaged in Mr Turney, it was a serious example but towards, in my view, the lower end of the range of aggravated burglaries.

29 And so I turn to matters personal in relation, first, to you Mr Jones. It was put by your counsel, Mr Barns, that your remorse is deep seated, genuine and reflected also in your pleas of guilty, as well as your confessional statements to the police. I am, in your case, satisfied that you are genuinely remorseful and for the reasons that follow I am satisfied that, in your case, your prospects of rehabilitation are excellent and that, in turn, not only do I take into account as a matter of mitigation, it also, in my view, lessens the need for you to be deterred, thus specific deterrence is of less moment in your case than it would otherwise have been.

30 You are now 24 years of age. You have been in a stable relationship with your partner for some eight to nine years and have two children from that partnership aged six and four. As the material will reveal, it is plain that you have been a devoted family man and an excellent father to your children. Further, in the 18 or so months that you have been in custody, you have continued your resolve to rehabilitate yourself doing all that you possibly could whilst in custody. Further, you have an excellent work ethic. I am satisfied in this case that your decision to seek and attack, your victim was an aberration.

31 I turn to the materials that have been put forward in support of the matters that Mr Barns relied upon, some of which I have addressed thus far. They include a letter addressed to myself which became PJ1. I extract some sections from that letter, dated 14 April this year. You wrote:

'Firstly I would like to start by saying that I acknowledge what I have done wrong and I am deeply sorry to not only the victim but his family and also the County Court of Victoria.

To Jacob Perger

I have never felt as bad about anything as I did that night. I know I invaded your home and this would have been very frightening, you did not deserve what happened that night. The amount of damage, pain and suffering would have been enormous and I am terribly sorry. I would also like to apologize for the injuries you sustained by me, no one should ever have to live through that. I regret it daily and wish I could take it back. I understand that this is not acceptable and I take responsibility for my actions.'

32 In the final two paragraphs of your letter you wrote:

'During my time remanded in custody I have constantly tried to better myself by partaking in the various courses necessary for my rehabilitation. Dealing with past emotions and experiences I have finally overcome. I feel it would benefit me greatly to see a psychologist/alcohol counsellor upon my release and this is something I want to do.

With my time incarcerated I have had a tremendous amount of support from my partner Stephanie and her family. They have visited me as often as possible given me advise for my business and courses and have made sure I have the support I need for my return home. I have been trying to do everything possible to get home to my children as soon as possible by avoiding conflict, helping prisoners and not having any incidents or I.D.O’s. I can advise you I have well and truly learnt my lesson and will never come back to this place.'

33 I accept what you have written.

34 Your partner has also written a letter which became Exhibit PJ2. In the letter she wrote:

'After the offending, Peter was extremely remorseful as he instantly broke down during his confession and he could not believe what he had done, he was embarrassed and ashamed for the pain he had inflicted on the victim. This affected him in many ways including his ability to focus and concentrate on work which was not his usual self. He became a recluse. This was a shock not just to himself but to everybody else that knew him as he has always been a placid person and has never displayed any form of violence towards anybody. He is always the protector and looking out for other people.'

35 Later she wrote:

'Prison has had both positive and negative effects on Peter. The positives being it has taught him a lot about himself given the time to be able to pause and reflect. He has developed new skills through the studies he chose to partake but, in my opinion, the most important being communication, where Peter now speaks of his emotions to better manage them instead of bottling them up and is able to consciously realise the detrimental impacts of the latter.'

36 In the final two paragraphs she writes:

'Since Peter has been in custody, he has been a great peer person for other inmates who look up to him and can see the good in him. We have had many conversations about his realisation of how detrimental alcohol can be and the consequences he is having to endure along with his family. He has had every intention of improving since. Peter has participated in numerous programs in custody which has assisted in his rehabilitation. I have confidence that he has and will continue to develop new skills needed to avoid making such a poor decision and I believe that he possesses the desire and determination to learn from this experience and move towards a positive direction in his life.

Your honour, Peter has always achieved what he sets his mind to with dedication and sheer force of will. Being in custody has given him more opportunity to reflect and develop a greater remorse for the poor and devastating decision he made. He has a large and committed support system in myself and our entire family and I know that Peter will not reoffend.'

37 Her father has also provided a reference which became Exhibit PJ3, in which he writes:

'I have now known Peter Jones since 2010 from the time he entered the lives of our family whilst in a relationship with my daughter Stephanie Zuel. At first, upon being introduced to Peter, I had reservations about him due to being informed of his unstable and abusive upbringing. As like any caring father, worry set in to which prompted the fatherly third- degree probing to which I was impressed with how Peter responded.

Not long after, Peter confided in me about his disfunctional upbringing and how much misery he was subjected to as a child. Peter was denied a good role model growing up and I was only too happy to oblige. He craved the affections of a real family and my wife and I were able to provide him with that love and support. We ended up with such a special bond that I consider Peter as my own son.'

38 Later he writes:

'Over the years I was able to observe how he handled the responsibilities of being a provider to which he would wake early every morning for work to attend a physically demanding job of being a roof tiler, only to return home to consistently contribute to household chores and of course most importantly, father his child.'

39 He concludes in the final paragraph with this:

‘During our frequent visits Peter has expressed great remorse for his actions and has seen and felt the immediate impacts on all including the aggrieved for which he is being charged. I will forever continue to mentor and support Peter and I am confident that he has learnt a life lesson

which will indubitably remain within him and upon his release will return to being the caring individual that he's always been.'

40 Your previous employer, Gary Hawkins also wrote a letter which became PJ7 in which he wrote:

'I was his mentor for 3 years. Peter learnt every asp ect of the job and never complained. Peter was driven and eager to learn. He is diligent and hard working. Upon completion of the apprenticeship, I was so impressed with his dedication that I offered him a full-time job.

In 2013,1 was diagnosed with cancer, Peter was there for me all through the 4 years of operations and radiation therapy often driving me to appointments at various hospitals and giving me a lot of his support. I took time off work, Peter's adaptability during that time is commendable: At just 18 years old, Peter showed great leadership skills. He became a great role model to the junior staff and very patient with the apprentices. He earnt their respect and is well regarded amongst his peers.'

41 He concludes with this sentence: 'Peter is wonderful partner and father, an exceptional worker and a loyal and caring friend'.

42 Finally, I turn to the psychological report of Carla Lechner which became Exhibit PJ6. I have carefully read this report and I note that she observes it fulfils the criteria for a diagnosis of major depressive disorder DSM 5 that seems to predate your incarceration. She also notes your suicidal ideation. At p.4, under the heading of 'Drug & Alcohol History', she writes:

'He added “when I found out that Steff had had an affair I was drinking from 9 a.m. onwards, it was heart-breaking … I was crushed and didn’t know what to do”. Mr. Jones stated that upon coming into custody and reflecting on his life, he realised that he has a drinking problem that he needs to address. He is aware that this is likely to both poor modelling in the home as well as a likely genetic predisposition. Mr. Jones has completed drug and alcohol courses in custody and wishes to seek further support upon his release into the community.'

43 Insofar as the CK depression inventory is concerned, Ms Lechner writes: ‘His score on the BDI falls into the “moderate” range, this being consistent with his presentation at interview and a diagnosis of clinical depression.’

44 She notes under ‘Treatment Considerations’: ‘Mr. Jones presents with symptoms of Alcohol Use Disorder – in early remission in a controlled

environment and Major Depressive Disorder (DSM 5 diagnoses).’

45 Finally, for my purposes, in the summary opinion section, sub-paragraph 5, she wrote:

'The consequences of his offending are a matter for the Court to determine. From a purely psychological perspective, Mr. Jones would benefit from a period of counselling support upon is release from custody. He currently presents with positive prospects for his rehabilitation on account of the following factors: i) a stable employment history; ii) good family support from his partner and her family; iii) no prior history of offending of any nature; iv) no known history of violence or aggression; v) a preparedness to engage with counselling supports (beyond that already completed in custody); and vi) good insight regarding the impact of his behaviour not only on himself but also his family, the victim and the victim’s family. It is therefore my view that the risk of reoffending in such a manner is low.’

46 I agree with that assessment.

47 It is for those reason that I assess your prospects of rehabilitation as excellent and in the circumstances, as I have said, specific deterrence plays a much lesser role than it would otherwise be in the sentencing process.

48 I now turn to the personal background of you Bradley Johnson. You are now 24 years of age. You come from a stable and caring family background, having two older brothers. You have a partner of short standing and you, as all three of you, had difficulty at school, attending eventually the Blackwood Centre for Adolescent Development in Drouin which gave you the equivalent of a year 10 pass. However, despite that intervention, you still had difficulty writing and reading. After being involved in carpentry, you went on to complete a roof tiling apprenticeship.

49 You then went to concreting and eventually, in the past six months prior to this offending, you had been working with your then employer, Mr Peter Jones. You are currently working as a stone mason and doing some gardening for your brother. You have had troubles with substance abuse, including in relation to methylamphetamine or ice. You have received strong

support from your parents and you have been able of your own accord to cease taking ice, going cold turkey. You have, in the past, been a heavy ice user and when you resumed on a particular occasion you ended up finding yourself in the Casey Hospital with a methylamphetamine induced psychosis.

50 It is said that you attended the victim's premises in order to support your employer, Mr Jones. That may in part explain your involvement, but as I have said, your involvement in this matter was an enthusiastic one. In the exhibits that have been tendered there is the joint letter of your parents which is BJ1, in which they write:

'He just simply needed to get away from the people that say they are his friends and get him to do things he wouldn't normally do, as he is every easily lead this with his combined with his drug problems made him an easy target for these people to get him to do things. Bradley thinks he needs to do things people tell him to fit in. It has been a hard time for us all not only coming to terms of what he has done but his drug problem. He has not only the support of his immediate family but his extended family have rallied around providing not only Bradley but all our family with love and support to help us through this journey to show him that we all believe in him and that we will always be there to support him, so that he can become the person we all know he can be. We strongly believe in Bradley. But am under no illusion that he is no angel and has made the biggest mistake of his life on this one night a mistake he is incredibly remorseful for and will always be on his mind for the rest of his life. But to continue on the path he is on , he needs you to give him the opportunity to have a second chance as we have as a family . He has been drug free since being on bail he only relapsed once which scared him as he had to be admitted on a 24 hr self hold due to paranoia. Due to his father and I not wanting Bradley to rejoining the workforce until he was in a good place he has started to enjoy cooking for all the family and helping family when needed .Bradley has just started doing some weekend work with his older brother at his job at the Nursing home helping with the gardening and is looking forward to becoming an Uncle for the first time in August. We realize that Bradley broke the law and I do not believe that he should go without some type of consequence. I just hope you will recognize the power you yield with regard to the future of Bradley as he is so easily lead and needs a lot of support to keep him on the path we have all worked hard for him to get on .Most of all we need to have our son back.'

51 It may be that you are a person who had been easily led in the past. However on this occasion, whilst you were led, it does not strike me that the evidence in any way suggests that it was because you were led that you engaged in this

conduct, far from it. You were an active and ready participant in all aspects of the plan hatched by Mr Jones. Indeed, your conduct immediately after, as revealed in the materials that I have dealt with, evidences something quite different from you being easily led. Rather, there seems to be some misbegotten pride in what you had done.

52 Your aunt has also written a letter which became Exhibit BJ2 and she also recites this issue of you being easily led, saying: 'Knowing him grow from a cheeky little man to the person he is today, he has always been a bit of a follower ,easily lead in some silly situations just so he could get his peers approval.' Later Ms McDonald wrote: 'Both my husband and I have spoken to Brad about what has happened we both belive that he now understands what he has done and wrong it was.'

53 A family friend Peter Berringer, also wrote a letter which became Exhibit BJ3. He, amongst other things, writes:

'At the time of the incident he was in an unhealthy relationship that led to him being involved with banned substances. His associates were not of good character and he eventually lost the respect of his family and friends. He also struggled to maintain employment. I can only suspect that these factors eventually led to him committing the offences. Since his arrest, Bradley's parents have ensured that he no longer has contact with his previous associates.'

54 In the psychological report of Jeffrey Cummins which became Exhibit BJ4, Mr Cummins has set out in some considerable detail your background, including at paragraph 13, your difficulties with schooling. At paragraph 14 Mr Cummins wrote:

'He then returned to undertaking the carpentry apprenticeship but shortly later lost interest in that work and by then was drug dependent. He then worked for 2 ½ years as an apprentice roof tiler with a Mr Ray Bell and he obtained his roof tiling apprenticeship. He then worked as a self- employed roof tiler for 254 years. Then for approximately 12 months he was working as a concreter on major building sites. He ceased this work because of his involvement with illicit drugs - "I stopped rocking up to work. I was then unemployed for about 12 months and then I was doing roof tiling with Peter Jones (co-accused) for six months until I got arrested for this (reference to the current charges)." For the past three

months he has been working as a stonemason with a mate named Jake. He typically works a five day week for which he takes home $150 per day. He said he enjoys this work, which he acknowledged was very hard physical work.'

55 At paragraph 21, Mr Cummins recites your account you being an inpatient at Casey Hospital, suffering psychotic symptoms.

56 Having considered your background, Mr Cummins then opines at paragraph 41:

'In my opinion his current risk of committing a further offence of violence is assessed as Moderate, which indicates it is imperative he complete an anger management program.'

57 And at paragraph 44 Mr Cummins writes:

'In conclusion, I assessed Mr Johnson's prospects for long term rehabilitation as being reasonably favourable.'

58 In my view your prospects for rehabilitation are good, but only if you keep away from the drugs when you're eventually released from prison.

59 And so I turn finally to you, Mr Turney. I have carefully read the written outline of submissions prepared by Ms Burnnard. You are now 25 years of age. As with the others, you come to this court with no relevant prior criminal history. You, like the others, a man in your 20s. It was submitted on your behalf that you entered to assist your co-accused in an assault. It is plain that, like the others, you were affected by alcohol, apparently drinking some six beers and some nine bourbons, and some cannabis. It seems all three of you were in some way affected by alcohol, drugs, or both. Unlike Mr Jones and Mr Johnson, your involvement was not in any way planned. You just happened to be there. Thus, your involvement was entirely spontaneous. It was submitted that you joined in as a result of some false sense of loyalty. I am not sure exactly why you joined in.

60 You too have a lengthy history of misuse of drugs, commencing drinking alcohol at the age of 14, cannabis at the age of 17 and ice at the age of 18. You made

a serious suicide attempt in August 2018, which I will come to. You have the benefit of a supportive network, you have a good work history, indeed, all three of you do.

61 You have concerns for your mother and her chronic heart problems. She wrote in her letter, which became Exhibit JT10, in the last paragraph, the following:

'I have just recently had Open Heart surgery and unfortunately that has not worked out as well as expected and it now looks like I will have to go back in for more surgery. Jorden greatest fear Is losing me on the operating table and never being able to see his daughter again or having her not know him, this has caused a huge emotional toll on him and his mental health along with serious depression. Jorden's remorse for what happened on the night of the 23rd of August 2017 has been huge, to see him crying and saying "mum I'm so so sorry for my part in what happened is heartbreaking. I've lost count of the number of times he has said he wants to apologize to the victim for what happened and he wanted to write him a letter of apology and how he wishes he could go back and changed what happened that night When he was first arrested and placed in custody for 3 days before making bail he had a break down in court so bad that he had to be removed, seeing that broke me and he has not been the same since. I am so worried and stressed about his mental health and how he will cope it is affecting my health greatly. He is truly sorry and very remorseful for the pain and suffering he has caused to Jacob and his family.'

62 Another family friend James Knight has written a letter which became Exhibit JT11. In the last paragraph he writes:

'Jorden has constantly stated that he is very remorseful for his wrong doings and I can say that in all the time I have known Jorden I have found him to be a decent caring person and has not shown at any time to me any violent or aggressive behaviour.'

63 Your step-father writes that he first met you when you were about nine years of age and writes in the last three paragraphs the following:

'Jorden and I have spoken on numerous occasions about that matters before you today, he is deeply sorry for his actions that night and wishes he could change what happened. He struggles with what occurred and his mental health has declined dramatically. He Is ashamed and very remorseful for the hurt this has caused us, his family but also the victim. To see him crying on a near daily basis saying I'm so sorry for what I have done is truly heartbreaking.

I understand he is pleading guilty to Aggravated burglary and assault.

He is extremely stressed about bow his mother will cope as she has just undergone open heart surgery not long ago. I am very concerned about his mental health as is his mother and this is causing us both great stress.'

64 There are two psychiatric reports of Dr Anthony Cidoni which became Exhibits JT1 and JT2. I turn to the more recent report JT2, insofar as it relates to a suicide attempt which is described in p.2 of that report in the following terms:

'Mr Turney was admitted to the Alfred Hospital from 11 August 2018 to 14 August 2018 to the Trauma Unit following jumping from a moving vehicle and being hit by two cars. He had to be sedated and restrained. He was admitted to the Intensive Care Unit from 11 August 2018 to 13 August 2018 and the ward from 13 August 2018 to 14 August 2018.'

65 In the first report which is dated 28 February 2018, Dr Cidoni opines that you have suffered from a major depressive disorder which is in relapse and also suffered from a drug induced psychotic disorder which is resolved. In paragraph 3 he states: 'I also believe that Mr Turney has had an alcohol use disorder in addition to cannabis and amphetamine use disorders.' And in paragraph 7 concludes:

'I believe that Mr Turney would be significantly vulnerable if incarcerated. I believe that there would be an extremely high likelihood of a worsening of the depression and a high risk of suicide, noting his previous serious suicide attempt. I have no doubt that imprisonment would weight more heavily on him than a person in normal health.'

66 It has been submitted on your behalf that the two principles in relation to the Court of Appeal decision of *Verdins* are enlivened. I accept the submission that imprisonment for you would be more burdensome given your concerns for your mother's health and given the mental condition adverted to in Dr Cidoni's first report at p.6.

67 I have also had the benefit of a psychological report from Matthew Saunders which became Exhibit JT9. In that brief letter Mr Saunders stated:

'Mr Turney presents with marked clinical depression that he has commenced ddressing though a resolute determination to get his life back together. He has impressed as conscientious in his attitude towards treatment, has made a concerted and successful effort to remain in employment as a qualified roof tiler and has displayed thoughtful and

genuine remorse about his self reported past offending behaviour as well as considerable shame.'

68 It is not possible during the course of my sentencing reasons to traverse all the matters that have been put during the course of each of the three pleas, and therefore, all these reasons must be read in conjunction with those discussions.

69 Finally, in relation to you Mr Turney, it was forcefully put by Ms Burnnard that I should obtain a report in relation to your suitability for community corrections order. I was circumspect, to say the least, about such a combined sentence being appropriate in the circumstances of this case. Whilst you were found suitable for such an order, the report is not entirely positive in relation to you. Again, your prospects of rehabilitation are good but, as with Mr Johnson, if you revert to the use of drugs your prospects will probably vanish. The choice for all three of you is your own.

70 In sentencing each of you issues of the need to parity sentencing, or just disparity, have arisen. In the ordinary course of events, you Mr Jones would receive the heavier sentence than that imposed on Mr Johnson, for you were the instigator of this home invasion; you were the leader whilst Mr Johnson was an enthusiastic participant. But in your case Mr Jones, I am faced with what is a rarity. A young man, as you all are, who immediately appreciates the gravity of his offending, takes on board the need for your own rehabilitation and gives effect to it, as best you can, in prison. As I have indicated, my assessment of your prospects of rehabilitation are excellent and therefore, in the circumstances peculiar to you, the needs for specific deterrence as a sentencing factor, that is, deterring you, is reduced. Whereas in relation to Mr Johnson and Mr Turney, I am not so satisfied that there is such a reduced need to deter them. In the event, for different reasons, I am in the position where I consider the sentence that I should impose upon you to be the same that is going to be imposed on Mr Johnson.

71 You, Mr Turney, are an entirely different situation. The prosecution has

correctly submitted that there is a need for disparity in sentencing you as opposed to the others. This flows from many of the matters that I have already addressed, the gravity of the offending of Mr Jones and Mr Johnson contrasted with those pertinent to you which I will not repeat.

72 And so it is that each of you have pleaded guilty to the charges on the respective indictments. For all practical purposes, the pleas are treated as early pleas of guilty. I take those pleas of guilty into account in two ways; the utilities of those pleas of guilty and as further evidence of remorse in relation to each of the three of you.

73 Sentencing young men, and no less than three of you, today with no relevant criminal history for such serious offending is a difficult task.

74 General deterrence, deterring others from offending is the principle sentencing factor I must, and do, take into account. Others must be deterred by the sentences that I impose on you three from committing offences such as this, which are all too prevalent in our community. People are entitled to close their front door, go about their business in their own home, go to their bedrooms and fall asleep and not have the front door kicked in, the power turned off and two men initially beating a man in his own bed with poles, then to be joined by the third, you Mr Turney. There is a need for just punishment to be imposed on each of the three of you and for your cowardly and serious misconduct, to be denounced by me.

75 Taking all these matters into account, I sentence you as follows. Stand please.

76 In relation to you Mr Jones, I sentence you to be imprisoned for a period of five and a half years. I set a minimum non-parole period of three years. But for your pleas of guilty, I would have sentenced you to eight years imprisonment and set a minimum non-parole period of five years.

77 In relation to you Mr Johnson, I also sentence you to be imprisoned for a period

of five and a half years and I set a minimum non-parole period of three years. I likewise declare that, but for your pleas of guilty, I would have sentenced you to eight years with a minimum non-parole period of five years.

78 In relation to you Mr Jones, I declare pre-sentence detention to be 566 days, excluding today, and in relation to you Mr Johnson, seven days.

79 In relation to you Mr Turney, I sentence you to be imprisoned for a period of three years and I set a non-parole period of 20 months. But your pleas of guilty, I would have sentenced you to a period of five years with a minimum non-parole period of three years. I declare pre-sentence detention to be three days.

80 I will make the disposal orders in Chambers.

MR McCONAGHY: If the court pleases.

HIS HONOUR: Are there any matters I have not addressed? MS BURNNARD: No, Your Honour.

MR MARSHALL: No, Your Honour.

HIS HONOUR: Yes, remove all three, please.

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