IN THE COUNTY COURT OF VICTORIA

Revised

Not Restricted

Suitable for Publication

AT MELBOURNE

CRIMINAL JURISDICTION

CR 19-00388

DIRECTOR OF PUBLIC PROSECUTIONS

v

GREGORY STEPHEN DUIKER

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JUDGE:

HER HONOUR JUDGE TODD

WHERE HELD:

Melbourne

DATE OF HEARING:

28 August 2020

DATE OF SENTENCE:

7 September 2020

CASE MAY BE CITED AS:

DPP v Duiker

MEDIUM NEUTRAL CITATION:

[2020] VCC 1356

**REASONS FOR SENTENCE**

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Subject: CRIMINAL LAW

Catchwords: Plea of guilty – two charges aggravated burglary– one charge theft –related summary offences – situational crisis immediately preceding events - offender has demonstrated remorse – circumstances of COVID-19 pandemic taken into account.

Legislation Cited: *Bail Act 1977; Crimes Act 1958* ; *Drugs, Poisons and Controlled Substances Act 1981* ; *Family Violence Protection Act 2008* ; *Sentencing Act* 1991; *Summary Offences Act 1966;*

Cases Cited: *Brown v The Queen* [2020] VSCA 60; *Jackson v R* [2020] VSCA 95; *Mill v R* (1988) 166 CLR 59; *Newman and Turnbull* [1997] 1 VR 146.

Sentence: Total effective sentence of 36 months imprisonment, with a non-parole period of 22 months.

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APPEARANCES:

Counsel

Solicitors

For the Director of Public Prosecutions

Mr Z. Menon

Office of Public Prosecutions

For the Accused

Mr N. Goodfellow

Leanne Warren & Associates

HER HONOUR:

**Introduction**

In the early evening on 4 June 2018 Ms Bae was at home in St Kilda when the doorbell rang. She opened her door and saw a man holding a large knife. The man struggled with her as he entered her home. He then stole Ms Bae’s things before going to a second house in a nearby street. There, he rang Ms Byrne’s doorbell and she was confronted in a similar way but managed to slam the door against him. The man entered a third home, also occupied, where he confronted the female occupant and her guest. Eventually he left after being challenged by a tradesperson who happened to be working there. These events unfolded over approximately 20 to 30 minutes, and caused very significant distress to the women whose homes were entered, and to their friends, neighbours and family. Later it emerged that the man was prohibited from being at this location because of a family violence safety notice that had been issued the previous week. He was on bail for other offending at the time, and was found to have a small quantity of drugs in his possession.

Gregory Stephen Duiker, you have pleaded guilty to two charges of aggravated burglary contrary to section 77 of the *Crimes Act 1958*, which each carry a maximum penalty of 25 years' imprisonment (Charges 1 and 3); you have pleaded guilty to one charge of theft contrary to section 74(1) of the *Crimes Act 1958*, which carries a maximum penalty of 10 years' imprisonment (Charge 2); and one charge of possessing a drug of dependence (methylamphetamine) contrary to section 73 of the *Drugs, Poisons and Controlled Substances Act 1981*, which carries a maximum penalty of 1 year imprisonment or 30 penalty units or both (Charge 4).

(Short adjournment.)

I just set out the indictable offences and now I will move on to set out the four related summary offences that were dealt with.

You have also pleaded guilty to four related summary offences, including one charge of unlawful assault with a weapon contrary to section s 24(2) of the *Summary Offences Act 1966* (Summary Charge 1), which carries a maximum penalty of 2 years' imprisonment; one charge of contravening a family violence safety notice contrary to section 37(2) of the *Family Violence Protection Act 2008*, which carries a maximum penalty of 2 years' imprisonment or 240 penalty units or both (Charge 8); one charge of contravening a conduct condition of bail contrary to section 30A(1) of the *Bail Act 1977*, which carries a maximum penalty of 3 months' imprisonment or 30 penalty units or both (Charge 9); and one charge of committing an indictable offence on bail contrary to section 30B of the *Bail Act 1977*, which carries a maximum penalty of 3 months' imprisonment or 30 penalty units or both (Charge 10).

You have admitted a prior criminal history.

**Circumstances of the offending**

The circumstances of your offending are set out in the amended summary of prosecution opening, dated 18 August 2020. That document is Exhibit 1 on the plea and forms part of these reasons.

I will summarise the facts giving rise to your offences here:

*Charges 1 and 2: aggravated burglary and theft*

On 4 June 2018 at around 7.00pm Ms Bae was at her computer in her home in St Kilda. You rang her doorbell.

Ms Bae opened the door and saw you standing there, holding a large knife up at her face level. When she saw the knife, which she would later describe as serrated and about 25 cm long, she tried to push you out of the doorway, but you said “no”, pushed her into the house while holding the knife and entered the house yourself. (This event constitutes Charge 1- aggravated burglary). Ms Bae then left her house. As she tried to leave the house you grabbed her cardigan and her arm. She slipped out of the cardigan and fell to the ground, hitting her knees and face.

Ms Bae went on to the street, screamed for help and tried to flag down a passing car. Neighbours started to come out of their homes to help. Ms Bae screamed “there’s a man in my house”. She asked for help, she was worried about her dog still inside the house.

A few minutes later Ms Bae saw you leaving her house and heard you say something like “…stabbed your dog”. Two neighbours also saw you leave Ms Bae’s house carrying a knife. You were seen walking towards St Kilda Road.

Ms Bae’s neighbours contacted Police to report what had happened.

When Ms Bae went back to her house with a neighbour, she noticed that her phone, laptop, handbag, her driver’s licence and credit card, which had been inside her handbag, were also missing. The value of the missing objects was around $5,500.

*Summary Offence Charge 1*

The same evening, shortly after 7pm, you knocked on the front door of   
Ms Byrne’s apartment, a short distance away. Ms Byrne opened the door and leaned out of the doorway. You approached her with the knife raised, pointing it at her face while yelling at her in a forceful way. Ms Byrne screamed and pushed her body against the door, closing it against you; the door made contact with you as she did so.

*Charge 3*

Ms Lina Di Pietro lives in the same building as Ms Byrne. Shortly after leaving Ms Byrne’s doorway and still holding the knife, you walked through the unlocked door of Ms Di Pietro’s apartment (Charge 3- aggravated burglary). Ms Di Pietro, who had been sitting with her brother-in-law in the living room, was shocked when she saw you and screamed. You told her to “Shut the fuck up, sit down, sit down. Shut the fuck up” as you waved the knife.

As it happened, Ms Di Pietro had two tradespeople working in her apartment that day. One of them, Mr Bortoli, came into the room when he heard Ms Di Pietro’s scream. When you saw Mr Bortoli you apologised and said, “Ok I’m really sorry, I didn’t mean to cause you any harm” and “I don’t want to hurt you, I just want to get out of here. Please let me go.” You asked if there was a back door. You were told you would have to “go back the way you came”. You then left. Ms Di Pietro called police.

Police records show the receipt of a call at 7.13 pm, this may have been the earlier call by Ms Bae's neighbours.

At around 7.20pm Ms Byrne’s husband arrived home and parked in the underground car park. He heard a woman screaming. As he was getting out of the lift he saw a man walking past carrying a kitchen knife.

Mr Bortoli, the tradesman from Ms Di Pietro's house, followed you down Bundalohn Court and saw you enter a laneway. He then saw you run towards Carlisle Street.

During an interview that you later had with police, you admitted to being within 200m of an address in Tennyson Street, St Kilda. By operation of a family violence safety notice issued on 28 May 2018 you were prohibited from being within 200m of an address in that street. The protected person under that notice is your former partner, Ms M. (This conduct gives rise to Summary Charge 8 - contravention of a family violence safety notice.)

Approximately seven days before these events you had been granted bail in relation to an unrelated incident. That grant of bail imposed a number of conditions, including abiding by the conditions of the family violence safety notice. (The contravention of that condition gives rise to Summary Charge 9 - contravene a conduct condition of bail.)

The existing grant of bail of 28 May 2018, which you were subject to on 4 June 2018, also gives rise to a summary charge - Summary Charge 10 - commiting an indictable offence while on bail.

*Arrest and interview*

As already noted, Police records indicate that at 7:13 PM they received information in relation to a man with a knife in Mozart Street, St Kilda - this is likely to have been the callers in relation to the first incident. They arrived in the area and arrested you in an alley nearby. When the Police approached you, you said “it wasn’t me, I didn’t do it, I was trying to roll a crackhead.” As you said this, a knife slid out from the sleeve of your jumper. You were searched and police found a handbag, iPhone, and laptop computer, all of which belonged to Ms Bae.

You were arrested and while you were being processed Police found a small amount of methylamphetamine in your possession (This refers to Charge 4 on the indictment - possession of a drug dependence).

On 5 June 2018 you answered questions in a police interview. In the course of that interview you told police that you were in the area to drop some food and money off to your former partner, Ms M. You told Police that you “flat out don’t remember this shit.” You told police “I [sic] word and I don’t I know you probably get this quite a lot, but word on my mother and my son, I do not remember a single thing like this happening.” You told Police that you did not have much recollection of the day from about lunchtime. Later in the interview you said:

“I think I figured out who it was. I was just keeping cocky for a bloke. This cunt’s name is Luke, and it’s not the same Luke that got done for the same burg. His nickname is fucking Wet, I think that’s what it was.”

You then give police a description of somebody named Louie.

*Procedural history*

On 5 June 2018 your case was listed for a filing hearing in the Magistrates’ Court. On 28 August 2018 a committal mention was conducted and a committal was heard on 27 February 2019 in the Melbourne Magistrates’ Court, during which your barrister cross-examined witnesses. On 28th of February 2019 an initial directions hearing was heard in the County Court and on 3 and 18 March 2020 further directions hearings were held; at the latter of these, the Court was advised your matter had resolved to pleas of guilty.

Despite your plea not being at the earliest possible time, your plea is still of real utilitarian value; so much was conceded by counsel for the prosecution. I will deal further with this later in this sentence.

*Nature and gravity of the offending*

By its nature, aggravated burglary is always a serious crime but, in order to properly sentence you, I am required to locate your offences in the more general context of sentencing for aggravated burglary to assess your crimes’ relative gravity.

You terrified three separate women in their homes. You physically confronted Ms Bae. I note that all three women reacted very bravely to your terrifying behaviour. Their fortitude, not only in the moment of being confronted by you, but in their later recovery is acknowledged. It was only when confronted by the tradesman in Ms Di Pietro’s home that you accepted defeat and left the third home.

Having said that, I note that when you entered the properties you were alone and not in company. The indictment to which you pleaded guilty makes it clear that each aggravated burglary offence was the entry with intent to steal (while carrying an offensive weapon). This distinguishes yours from cases where entry to the property is motivated by a desire to harm those inside the house, or to purposefully carry out acts of anger and punishment or where those inside are deliberately targeted for some purpose of revenge, or in the context of harm in an intimate relationship. You entered these properties in the early evening, by the front door. You did not break windows or doors. None of your victims had reason to be particularly frightened of you in a personal way in that you had no particular history with them. When finally confronted in Ms Di Pietro’s house you left without confrontation, however this is probably because you realised you were then outnumbered. I accept that your offending was chaotic, unplanned and completely desperate, and not motivated by any particular malice towards the owners of the properties. I note that your breach of the family violence safety notice was proved by your admission to Police that you were within 200 m of the relevant address.

The fact that these crimes were committed while you were on bail is significant and it also here manifests in separate charges.

It was properly conceded by counsel for the prosecution on the plea that the aggravated burglary in relation to Charge 1 was complete upon your entrance to the building and that you are not to be sentenced for the physical interaction with Mr Bae that unfolded after you were inside or indeed once she was outside. I have taken into account the circumstances of your entry into the premises, as I must, in order to assess the gravity of that event. You physically confronted Ms Bae as you entered the property, you held a knife at her face and in this way caused her to feel terror, but I make it clear that I have not sentenced you for surrounding conduct that is not charged.

*Victim impact*

I am obliged to take into account the impact of your offending on your victims. Ms Bae read her Victim Impact Statement to the Court. In her statement, Ms Bae described what happened to her. She described being fearful for her life during the incident. While it was later established that your intent on entry to her home, was to steal, as opposed to hurt her, she was not to know this at the time. She is being treated for post-traumatic stress disorder; she has found it difficult to work. She records how your actions have had a lasting effect not only on her, but on her husband and her family as well. She should never have been asked to endure this. Significantly, and to her great credit, she also noted that she does not hold any anger or ill will towards you and hopes for your successful rehabilitation.

Although the other victims of your offences did not choose to make such statements, I still take into account that these would have been terrifying events for them too, a fact that was carefully acknowledged by your counsel on the plea.

*Personal circumstances*

Gregory Stephen Duiker, you are now 41 years old. You were 39 years old at the time of the offending.

You were born and raised in Dandenong, Melbourne. But for two weeks in Sydney in 2011, you have never left Victoria. You were raised in a supportive home by two parents. You have one brother and three sisters; one of your sisters died suddenly in 2012 from a heart attack and your mother died in 2015 from lung cancer. Since your sister died in 2012 you have been estranged from the rest of your family, however more recently you have started to rebuild a relationship with your father through occasional telephone contact from custody.

At the time of the offending you were in a relationship with, or perhaps just shortly out of a relationship with, Ms M; you lived on the streets together until she was able to secure a house a number of weeks before this offending. After an incident on 27 May 2018, which caused you to be charged with damaging a window at Ms M apartment, a family violence safety notice was issued for Ms M. The immediate consequence for you was homelessness.

In terms of long-term relationships you have had as an adult, there was Ms Sarah Gard from 2004 to 2011, and from this relationship your son Jackob was born; he is now 11 years old. Your family maintain a relationship with Jackob but you have been prevented from seeing him since 2014. Your second relationship of any significance was with Ms Heidi Toth to whom you were married for a number of years. This relationship ended in 2016. You later acknowledged that it was your drug use that caused the destruction of your marriages.

You were educated to the end of year 11 at St Francis Xavier, Beaconsfield. You completed a carpentryapprenticeship in 2000. During that apprenticeship you used cannabis and intravenous amphetamine. Although you completed all the practical components of your apprenticeship, you did not formally qualify as you did not complete the final requirements.

By the time you completed your apprenticeship your drug dependency was at a level that prevented you from being able to hold down full-time employment, however in 2004 you did have semi-regular employment as a forklift driver, labourer, and in warehousing; these roles were for labour hire companies and never permanent or full-time. Permanent full-time work was elusive for you.

Between 2004 and 2012 you enjoyed a period of relative personal stability, however your drug use increased and your relationship with Ms Gard broke down as a consequence. You were hospitalised in the Alfred Hospital on   
25 April 2011 for psychiatric assessment and were discharged from 2 May 2011.

Your drug use started with using cannabis around the age of 15 years and this progressed to using LSD and amphetamine. By the time you were 18 you had started to use intravenous amphetamine regularly. By the time you were 20 this use was entrenched. You then moved on to using heroin, a habit that became daily between the ages of 19 and 23 and which resulted in your first term of imprisonment. Between 2002 and 2011 your drug use was under control but since the end of this period of relative stability in 2011, marked by the sudden passing of your sister from a heart attack, you have struggled with addiction to methamphetamine, alcohol and prescription medication (benzodiazepines in particular). On the day of your offending you had used a combination of all these.

*Mental health history*

You had your first psychiatric admission as the result of a “dysthymic disorder, polysubstance abuse, situational crisis and suicidal ideation” on 25 April 2011. You were an inpatient at the Alfred psychiatric unit between 25 April and 2 May 2011. As mentioned earlier, you were assessed by a crisis assessment team connected to the Alfred Hospital in the days preceding the events that bring you before the court today. You were found by that team to be suffering from suicidal ideation. By the time of these events, you had attempted suicide by overdose on multiple occasions.

*‘Situational crisis’ immediately preceding the events*

On 28 May 2018, five days before your offending, you were admitted as an inpatient to the Alfred Hospital after your presentation there in the emergency department. Notes from that admission refer to your history of “chronic intermittent passive suicidal ideation;” the note goes on to say “made homeless today. Has been with partner for a while but moved in with her 3 months ago due to being homeless.” The notes go on to record that you were feeling stressed as a result of being homeless and reported poor sleep, appetite and heavy methamphetamine use. The diagnosis was “situational crisis”.

In the days following 28 May 2018 you also sought assistance at the Royal Melbourne Hospital. Apparently, and unfortunately, neither hospital was able to refer you to any ongoing support.

*Psychological evidence on the plea*

Mr Jeffrey Cummins, psychologist, assessed you on 21 July 2020. It is Mr Cummins’ opinion that you suffer from a “borderline personality disorder”. He also is of the opinion that the most applicable diagnosis for you is “chronic adjustment disorder with mixed anxiety and depressed mood.” Mr Cummins notes that your symptoms of anxiety and depression are most probably secondary to your drug use. Your counsel sensibly conceded that it was by now almost impossible to unravel the combination of your psychological problems, your drug use and the practical situational crisis that you were facing just before you committed these offences.

On your plea, your counsel, Mr Goodfellow, submitted that your mental health is relevant to the sentencing process in two ways.

First, you will find prolonged custody more burdensome than a prisoner without these conditions.

Secondly, that your vulnerability to situational crisis and the corresponding increase in your polysubstance use provides context, without offering an excuse for your offending. I accept both those submissions.

*Prior history*

I have had regard to your prior criminal history, which commences in the Dandenong Magistrates’ Court in 1998. It unfolds with some regularity over the next 20 years. But for one court appearance in relation to recklessly causing injury intentionally, causing injury and possessing a controlled weapon without excuse in 2015, your history has not generally been marked by violence. That 2015 offence aside, your prior history indicates offending to support drug addiction that is generally non-violent and nonconfrontational. Your most recent offending does stand out in this context. I note the gap in your offending during the period where, for about eight years between 2004 and 2012, you were able to hold down casual work and have a relatively stable family life.

*Timing of guilty pleas*

This matter resolved after a contested committal. Your lack of memory for the offending made it difficult for you to resolve this case at the earliest opportunity. Mr Goodfellow submitted on your behalf that one of the barriers to the resolution of this case was the level of personal denial or shock that you have experienced (perhaps even shame) that you did the things described by the witnesses. Mr Goodfellow submitted on your behalf that the committal hearing provided some opportunity to clarify the events at the Tennyson Street address.

Notwithstanding that you chose to run a contested committal, I regard your plea of guilty as having a substantial utilitarian value. The witnesses have  
been spared the distress of having to give evidence in front of a jury and   
it must have given them significant relief once your case resolved to pleas of guilty.

Moreover, at a time when the COVID-19 pandemic is causing so much havoc with the way courts are able to hear cases and the consequent serious increase in the backlog of criminal trials, I regard your plea of guilty as particularly significant as it takes one more trial out of an already very burdened system.

*Remorse*

Through your counsel you have acknowledged the severity of what your victims experienced. You now acknowledge how your drug use produces dangerous consequences for other people. You have acknowledged that you feel embarrassed about what you did and I accept that you now have a degree of remorse.

*Time in custody*

As at the date of the plea hearing, you have completed 816 days (2 years, 2 months and 24 days) of pre-sentence detention. Time on remand is more difficult because of the inherent uncertainty and it is particularly difficult in these current times.

Your history has been blighted by a lack of access to safe and permanent housing. I note that eight days after your remand into custody on the current offences you received a letter from the Department of Health and Human Services to inform you that a public housing property had become available for you in Heidelberg. That offer expired (the letter indicating this offer is dated 12 June 2018 and is marked exhibit E on the plea) as a result of your imprisonment you were unable to take up that offer. You had been waiting for that letter for 10 years.

*Regard to current sentencing practices*

I have had regard to current sentencing practices for aggravated burglary. None of the cases were exactly like yours, however I have broadly taken into account the sentences for other offending in this category.

*Impact of public health measures*

You have been in custody throughout the Covid-19 pandemic. It is now widely accepted that the pandemic, and the measures taken to address it by correctional authorities are causing additional distress and concern for prisoners and for their families.

*Use of time in custody*

The history of education and personal improvement while in custody since 4 June 2018, to which I will return in more detail later in this sentence, demonstrates the particular effect of the COVID-19 measures on you. It is clear that until February 2020 you applied yourself in custody completing a very large number of courses. I have evidence of this in a number of certificates tendered on the plea and marked as Exhibit C. There is little doubt that you would have continued to participate in those educational opportunities with the same perseverance that you demonstrated in the first year of your custody. Those opportunities were denied to you through no fault of your own. Further, you had completed six weeks of one-on-one counselling that ceased as a result of the restrictions. This is a significant matter that I have taken into account.

*Rehabilitation*

I am obliged to consider your prospects for rehabilitation. On this, I note in particular that you completed a 24-hour alcohol and drug course and underwent six weeks of individual counselling during your time in custody. You have taken the opportunity while in custody to renew contact with your father, which had previously ceased for several years, and with a cousin, who lives in Queensland. It appears that through your more recent contact with your father he has been able to renew his support of you.

On the plea a number of certificates from the Box Hill Institute were tendered. You have completed certificates in measuring familiar quantities for work, skills for work and vocational pathways, digital media and technology, first aid, food processing, horticulture, and many other subjects. Among them, you have apparently applied yourself to courses with a view to future contact with your son: a parenting program, the power of positive parenting program, the raising confident competent children program, the raising resilient children program, amongst others.

On the plea, I also received a letter dated 8 June 2019 (Exhibit D) authored by Dr Marietta Martinovic, a senior lecturer at the School of Global, Urban and Social studies at RMIT University. Dr Martinovic’s letter records your participation in the ‘inside out prison exchange program’ at the Marngoneet Correctional Centre, and the ‘Think Tank’ program at the same facility. Dr Martinovic explains that the students in these programs, comprising of 15 prisoners and 15 of RMIT’s criminal justice students, complete on a weekly basis a ‘complex reading for homework’ task and participate in critical discussions on all the topics covered. In terms of written assessment, you completed three separate reflective essays, each of about 500 words, and a group project, which you confidently presented in front of an audience of more than 100 guests. You received a combined mark of 81/100: a high distinction. You undertook a second course called the ‘Think Tank’ course, also run by RMIT which had fewer students and similar participation and assessment. According to Dr Martinovic, you have been a great contributor to the group in both courses. You are regarded by Dr Martinovic as a diligent student and valuable part of both those programs.

Your participation and commitment to these programs is very impressive: it suggests that you have both diligence and capacity. I regard that work as a significant indication that you have good prospects for rehabilitation. It was put by your counsel on the plea, and this submission is consistent with your educational record in custody, that you are a person of some capacity. Moreover, there have been significant periods in your life when you have held down work and conducted successful relationships. You come from a good family. When you are not addled by drugs and the crisis that follows in their wake, you know how to work hard and apply yourself. Mr Menon, counsel for the prosecution acknowledged that the “raw materials” in your case suggest good prospects. Your counsel submitted that, in the light of what appears to be your natural capacity, your story is somewhat tragic. I think what he meant by that was that it seems powerfully unnecessary for you to continue to waste your abilities.

Despite your lengthy history, I note that your participation in education while in custody has been exemplary and should give you confidence, as it gives me, that there is a different life available to you. This is the longest time you have spent in custody. You have used it to educate yourself, get counselling and begin to repair your relationships, which have suffered so much as a result of your drug abuse, not only with your family of origin, and you have also set your sights on the recovery of your relationship with your son.

*Particular sentencing considerations*

It was put by both Counsel on the plea that both general and specific deterrence play an important role in the sentencing process in your case. You must also be appropriately punished for what you did. This court must also denounce this type of conduct and on behalf of the community the court says, through this sentence, that you cannot and must not impose your difficulties on others by terrifying them in their homes.

*Totality and concurrency*

Since your remand into custody on these matters on 4 June 2018, you have spent a total of 816 days in custody. However, on 3 June 2019 you pleaded guilty to six charges on two police briefs in the Dandenong Magistrates’ Court. Those charges were two charges of burglary relating to offences committed on 24 May 2018 and 10 April 2018, one charge of theft on 10 May 2018 one charge of committing criminal damage on 27 May 2018 and one charge of committing an indictable offence while on bail. You committed each of those offences prior to your remand into custody as a result of the offending now before this court. In the Magistrates’ Court you were sentenced to 365 days imprisonment with 365 days declared as presentence detention. Technically then, there are 460 days pre-sentence detention to be declared pursuant to section 18 of the *Sentencing Act* on this offending, however the additional time spent by you in custody is relevant to my consideration of the principle of totality.

The principle applies to your case at two points of the sentencing process. First, I must apply a sentence that is appropriate for the totality of the offending on this indictment (and the additional summary charges). The second point I must apply the principle is that I must take into account the imposition of the earlier sentence in the Magistrates’ Court.

I will first deal with the earlier sentence. I approach this problem by considering all the offending, including that which was sentenced in the Magistrates’ Court on 3 June 2019, and asking what sentence that offending in totality with the current offending would have attracted had you been dealt with for all these offences together.

In doing this, I am not confined to only adjusting the non-parole period but also to the fixing of a head sentence.

The result of this exercise is that the consequent lowering of the head sentence may, on its face, fail to reflect adequately the seriousness of the crimes (those before this Court) for which it is imposed. While unfortunate, principle demands I do this to avoid the injustice involved if I were to impose a longer head sentence than the totality of the offending requires.

Further, fairness requires that I consider the progress of your rehabilitation during the 365 days you served on your earlier sentence. I have dealt with the aspect of delay in your case and your use of opportunities for rehabilitation while in custody, elsewhere in these reasons.

I have attempted to sentence you on the instant offending with a degree of concurrency that is just and appropriate, taking into account that your offending took place over a period of approximately 20 – 30 minutes, close both in time and proximity, and involving acts similar in nature and motivation.

Delay

I note that the delay in your case, of over two years where you have had the matter hanging over your head, is mitigating.

**Disposition**

Mr Duiker, now is the time that I would normally get you to stand so that I can tell you my sentence but given the screen I will just get you to remain seated and listen to the sentence.

Gregory Stephen Duiker I therefore impose the following sentences in your case:

On Charge 1, aggravated burglary, I sentence you to 25 months imprisonment.

On Charge 2, theft, I sentence you to 4 months imprisonment.

On Charge 3, aggravated burglary, I sentence you to 15 months imprisonment.

On Charge 4, possession of a drug of dependence, you are convicted and fined a total of $200.

On Summary Offence No.1, being the unlawful assault with a weapon contrary to s.24 of the *Summary Offences Act* I impose a sentence of 5 months imprisonment.

On Summary Offence No.2, the contravention of the Family Violence Safety Notice, I impose a sentence of 2 months imprisonment.

On Summary Offence No.3, the conduct condition of bail charge, I impose a sentence of 1 month imprisonment.

On Summary Offence No.4, committing an indictable offence while on bail, I impose a sentence of 1 month imprisonment.

I make the following orders for cumulation. I direct that 1 month on Charge 2, 7 months on Charge 3, 2 months on Summary Charge 1, (that is the unlawful assault with a weapon charge), and 1 month on the Summary Charge (in relation to the contravention of the Family Violence Notice) be served cumulatively on Charge 1, the base sentence, and upon each other which brings us to a total effective sentence of 36 months imprisonment and I direct that you are to serve 22 months before becoming eligible for parole.

I declare that but for your plea of guilty I would have imposed a total effective sentence of four years with a 30 month non-parole period and I declare that you have served a total of 460 days pre-sentence detention, not including today.

I make the orders for forfeiture in relation to the knife and disposal in relation to the methylamphetamine as sought.

Counsel, is there anything arising out of that?

MR MENON: Sorry, Your Honour, it might just be from my end, I missed the total effective sentence and the non-parole period. I heard 35 months?

HER HONOUR: Thirty-six months total effective and then non-parole 22.

MR GOODFELLOW: As Your Honour pleases, nothing, Your Honour.

MR MENON: As Your Honour pleases.

HER HONOUR: I thank the parties for their assistance and I thank those who have attended today to participate in the hearing for being here, your presence improves our court, so I am grateful for that and I am grateful for the assistance of counsel.

COUNSEL: If Your Honour pleases.

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