

IN THE CHILDREN'S COURT OF VICTORIA
CRIMINAL DIVISION

DPP

v

LZ*

JUDICIAL OFFICER: MAGISTRATE FLEMING

DATE OF HEARING: 17 April 2020

DATE OF SENTENCE: 8 May 2020

CASE MAY BE CITED AS: DPP v LZ [2020] VChC 2

REASONS FOR SENTENCE

Catchwords: Plea of guilty to one charge of aggravated carjacking (causing injury), two charges of attempted aggravated carjacking, two charges of theft, drive while disqualified, obtaining property by deception and false imprisonment – offending occurred while on youth parole – personal circumstances including extensive history with Child Protection – Aboriginal descent – offending associated with drugs – prospects of rehabilitation – sentenced to concurrent Youth Justice Centre orders – conditions including Youth Justice supervision and undertaking of treatment and rehabilitation.

APPEARANCES: Counsel

For the OPP: Ms. Burnett

For the Accused: Mr. Kennedy

* This decision has been anonymised.

HER HONOUR:

1. LZ you have pleaded guilty to one charge of aggravated carjacking (causing injury), two charges of attempted aggravated carjacking, two charges of theft, drive while disqualified, obtaining property by deception and false imprisonment.
2. You were aged 16 at the time of the offending and you fall to be sentenced as a child offender. At the time that you pleaded guilty you admitted previous convictions from the Children's Court.¹ Relevantly you have a prior for aggravated carjacking (offensive weapon) and other offences involving violence.
3. On the charge of aggravated carjacking you were sentenced in the Children's Court on 15 September 2017 to a period of 12 months' Youth Justice Centre detention. This was part concurrent upon other periods of detention imposed for other offences including aggravated home invasion (steal) – offensive weapon, aggravated burglary – person present, reckless conduct endanger serious injury, aggravated carjacking - offensive weapon, armed robbery and multiple other offences. The effective total term imposed was one year and six months.
4. Subsequent to this sentence on 30 November 2018 you were sentenced in the Children's Court to 12 months' aggregate sentence for home invasion (steal) – person present, armed robbery, burglary and other offences. Your prior criminal history is documented in the Police Criminal History Report.
5. This offending occurred on 24 June 2019 and 26 June 2019 at which time you were on youth parole. The Youth Parole Board released you on parole on 17 June 2019.
6. You have pleaded guilty to the charges and that is to your credit. By your plea of guilty, you have saved the time and cost of a trial. By your plea of guilty, you have accepted and admitted responsibility for your crimes and you have facilitated the administration of justice. Importantly, you have saved the complainants from being called to give evidence against you and being cross examined by your counsel.
7. Your plea of guilty means that the law provides that you are entitled to a reduction in sentence and this will be reflected in the sentence that I will impose.
8. The circumstances of your offending are contained in a summary that was tendered in evidence and read in open court by a prosecutor. Your counsel accepted that the prosecution summary was accurate. It is not necessary to set out the detail of the summary however the sentencing remarks should be read with what is set out in more detail in the summary.

¹ LEAP Victoria Police Criminal History.

9. In relation to the first incident, I have heard that on 24 June 2019 in the late afternoon you were with the co-accused, who was also 16 years of age. You approached the victim who was seated in his car with his two male friends waiting for his daughter to finish basketball training. You demanded the car keys. You were armed with a taser, which you activated away from the victim. When two of the males jumped out of the vehicle and yelled at you, you ran off.
10. In relation to the second incident, I have heard a summary that on 26 June 2019 in the early evening you were with the same co-accused. The circumstances of the offending are similar to the first incident. You approached the victim who was collecting his grandson from piano lessons. During the course of the incident you yelled aggressively at the victim and demanded his car keys. The victim did not speak English and was in fear for his grandson, calling for him to contact the police. The victim tried to prevent you from starting the car and he tried to pull you out of the car seat. The victim was then kicked three times in the back by the co-accused. You then punched the victim multiple times in the head and chest. You were unable to start the car and you both then ran off. The victim has reported tenderness in his back and was visibly emotionally upset and crying as a result of your offending.
11. In relation to the third incident, I have heard a summary that later on 26 June 2019 at 11.30pm you approached the victim who was washing his friend's car at a car wash in [location removed]. You and the same co-accused have approached him and asked him for a lift and he has refused. You have both walked away only to return and you have threatened the victim saying "Do you want us to stab you? Do you want us to take the car or what or you want to give us a lift". The victim has then driven you to [location removed] with you in the rear seat and the co-accused seated in the front passenger seat. The victim has driven you from [location removed] and then as you requested back to [location removed] where your co-accused asked him to stop. The victim observed you to pass something to the co-accused and in fear that he would be stabbed has got out of the car. You have then attacked the victim punching him to the face numerous times until he hit the concrete road. You have then kicked the victim to his face and to his body and demanded his car keys. When the victim has dropped the car keys you and the co-accused have driven the car away with the victim's phone and wallet and other personal items still in the car. You used the victim's debit card to purchase items, namely soft drink and food and fuel. At the time that you were driving you were a disqualified driver.
12. I have heard the victim impact statement and note that the victim sustained a fracture in the left elbow, nasal fracture, swelling to his lower lip and right ear and superficial grazes to his lower chest, upper back and right knee. The statement of the victim shows the effect that

crimes of this kind have a lasting effect upon the victim and this is no exception. In passing sentence I have taken the victim impact statement into account as I must.

13. You were arrested shortly after 10.30 am on 27 June 2019 and have been in custody since that date.
14. You are the eldest of two children. Your parents separated shortly after your younger sister, who is 15, was born. You have two older half-sisters on your mother's side. You have resided, on and off, with your father since you were approximately 12 years of age. Your father suffers from Acquired Brain Injury and substance misuse. Your preference would have been to reside with your mother but this has never eventuated.
15. You receive minimal visits from family members while in custody. While at Malmsbury you received one visit from family. Since when you were transferred into adult custody in January 2020 you have not received any family visits. You have not been supported in Court by family.
16. You have had extensive history with Child Protection. You were born opiate dependent and the initial reports from Child Protection relate to parental substance use, mental health, neglect in care and family violence. You were placed in approximately ten foster placements in your childhood.
17. Dr. Helen Driscoll completed a psychiatry review in July 2016 at which time you were placed in Secure Welfare, for the third time that year. Dr. Driscoll assessed that you were suffering from Reactive Attachment Disorder "in keeping with your developmental trajectory of absence of reliable, attuned and nurturing parenting figure who could have installed a sense of safety".²
18. You have used cannabis when in the community and recreational alcohol use. You reported using GHB and methamphetamine at the time of this offending.
19. You are in good physical health and you do not have an intellectual disability, being assessed in the overall average range of general intellectual functioning.
20. Your education has been compromised by your placement history and absence of family life and your formal education is limited. You completed Year 7. Since 2015 you have not been consistently engaged in education.
21. Your involvement with Youth Justice commenced when you were 13 years old. Your offending quickly escalated, you have been subject to two community based orders and

² Pre-sentence Report 5/5/2020.

received your first custodial disposition at 14 years of age in 2016. You have spent approximately a cumulative period of 40 weeks in the community since 2016 and the remainder of the time you have been in custody. You have breached every order that you have been placed on by the Court by reoffending.

22. You are of Aboriginal heritage on your father's side. A cultural plan was developed for you and you have sporadically engaged with the Aboriginal Cultural Liaison officer. You have displayed minimal engagement with this service.
23. On 17 June 2019 you appeared before the Youth Parole Board and you were released from Malmsbury Youth Justice Centre. This was the fourth opportunity for you to undertake youth parole. These offences occurred in the weeks following your release.
24. On 27 June 2019 your parole was cancelled and you were credited with seven successful days of parole. Your parole is due to expire on 2 July 2020. As a result there is no pre-sentence detention period that can be applied to this sentence.
25. At the time of your parole cancellation you were returned to Malmsbury Youth Justice Centre.
26. On 9 January 2020 you were involved in an assault against a staff member at the Malmsbury Youth Justice Centre. You were moved to Parkville Youth Justice Centre and an application to transfer your sentence to adult custody was made under section 467(1) of the *Children, Youth and Families Act 2005* (CYFA). You were directed to serve the unexpired portion of your order in prison. You were transferred to the Melbourne Assessment Prison and placed in 23-hour lock down for approximately four weeks. You were then transferred to Port Phillip Prison.
27. You have expressed fear and discomfort at being placed in adult custody.
28. You are currently detained in the Penhyn Unit, which houses 18 – 21 year old offenders. You have described that you are now feeling settled in the unit and report that you "like it" there.
29. Your offending has been described as being in the context of impulsivity, a sense of hopelessness, poor decision-making and associating with like-minded peers.
30. You are described in the pre-sentence report as struggling to express and demonstrate an appropriate level of insight and remorse. The author of the report opines that it may be the result of your lack of emotional nurturing and authentic attachment as a child. Your counsel has stated that when you heard the victim impact statement in open court that "you felt bad".
31. Your offending was opportunistic and you committed these offences with another person. Your offending was associated with drugs, in your case methamphetamine and cannabis. As

a young offender the law provides that in sentencing you I must have full regard to your prospects for rehabilitation which I assess as being reasonable despite the fact that you committed these offences while subject to parole.

32. The sentencing regime in the Children's Court is different to the sentencing of adults. The regime can and does lead to dispositions which would be regarded as entirely inappropriate in the case of older and presumably more mature individuals. The regime is a welfare model in order to provide you with every opportunity to undertake programs to deal with your anti-social behaviour. I consider that I must impose a sentence that will assist you change your life so that you can have an offence free future.
33. Your prior history and evidence of you committing offences while on community orders is of concern. However, while you have been in custody you have made some good progress in more recent times.
34. I note the pre-sentence report of Youth Justice and the recommendation that you be placed on a Youth Justice Centre Order.
35. Mr. Kennedy has put in mitigation that having been released on parole you were compliant and commenced employment on the new [detail removed] project. You met your co-accused on the project and you both had a lot in common. After week one you did not comply with your curfew and you met up with your co-accused and used methamphetamine. You knew that there was drug testing on the worksite and, to your credit, you disclosed your usage having turned up for work. You were not permitted to continue to work and so you gave up. You used cannabis, GHB and methamphetamine and at the time of the offending you had not slept for five days. You knew that you would be arrested for breaching your parole. You were injured during the course of your arrest.
36. While in adult custody the COVID-19 restrictions have been in place. In *Brown v The Queen* [2020] VSCA 60, Weinberg and Priest JJA addressed COVID-19 considerations:

“With regard to the COVID-19 pandemic, and the submission put forward on behalf of the applicant in that regard, we readily acknowledge that this is a matter that is certain to come before this Court again in the immediate future. In the absence of any adequate material concerning the impact of the virus upon the Corrections system, as matters stand, and given that the situation is one that is rapidly evolving, we are hesitant to express a general statement of principle regarding how this Court (and others) should deal with this crisis as regards its effect upon relevant sentencing principles. We do accept, however, that the situation is causing additional stress and concern for prisoners and their families, as it is for every

member of the community. The extent to which that may be taken into account, if at all, will be a matter to be resolved on the particular facts of any individual case.³

37. Your counsel has submitted that you have been unable to participate in programs and that you are working cleaning windows and gardening. You are also seeing a counsellor.
38. I am accepting of your counsel's submissions. This sentence is not intended to be crushing. It is intended to assist you to turn your life around. I would expect that you participate in ongoing counselling and other rehabilitation programs when they become available to you.
39. On the charge of attempted aggravated carjacking – causing injury (charge 1) I sentence you to 12 months' Youth Justice Centre detention.
40. On the charge of attempted aggravated carjacking – causing injury (charge 4) I sentence you to 12 months' Youth Justice Centre detention.
41. On the charge of aggravated carjacking - causing injury (charge 8) which is a Category A serious youth offence as defined in the CYFA I sentence you to 14 months' Youth Justice Centre detention. I take into consideration section 362(1)(g)(i) of the CYFA.
42. On the charge of false imprisonment (charge 9), driving while disqualified (charge 13), obtain property by deception (charge 14) and theft (charge 16), I sentence you to 6 months' Youth Justice Centre detention.
43. The sentences on all charges will be served concurrently.
44. For the purposes of the CYFA I state that had it not been for your plea of guilty to the charges I would have imposed a term of detention of 24 months.
45. There will be conditions that you undertake supervision from Youth Justice, that you undertake treatment and programs for rehabilitation.
46. I have been asked to sign disposal orders, which are not opposed, and I have signed them.

³ *Brown v The Queen* [2020] VSCA 60, [48].