



SENTENCING WORKSHOP

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Scenario I

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SENTENCING WORKSHOP - TIMETABLE

It is proposed that the workshop will run along the following general lines:

Brief introduction and overview of court system

Welcome by Judge

Summary of sentencing law and purposes, including sentencing principles and factors considered in sentencing

Judge sits in court; indictment read; Crown facts stated, plea in mitigation; Judge adjourns

Group workshop to discuss sentence within group

Judge's decision re sentence

Summary, comments, questions

SENTENCING LAW

Sentencing Law - Sources

- *Sentencing Act 1997* (Tas)
- *Youth Justice Act 1997* (Tas)
- *Criminal Code* (Tas)
- *Crimes Act 1914* (Cth)
- Common law (case law; previous judgments of Courts)
- Acts creating particular offences and crimes (e.g. drink-driving penalties)

PURPOSES OF SENTENCING

- punishment and retribution
- rehabilitation of offenders
- deterrence of offenders and other persons from committing offences (individual deterrence; and general deterrence)
- denunciation of the conduct of offenders
- incapacitation

The purposes of the Sentencing Act 1997 are set out in section 3 of the Act as follows:

The purpose of this Act is to –

- (a) amend and consolidate the State's sentencing law; and
- (b) promote the protection of the community as a primary consideration in sentencing offenders; and
- (c) promote consistency in the sentencing of offenders; and
- (d) establish fair procedures for –
 - (i) imposing sentences on offenders generally; and
 - (ii) imposing sentences on offenders in special cases; and
 - (iii) dealing with offenders who breach the conditions of sentences; and
- (e) help prevent crime and promote respect for the law by allowing courts to –
 - (i) impose sentences aimed at deterring offenders and other persons from committing offences; and
 - (ii) impose sentences aimed at the rehabilitation of offenders; and
 - (iii) impose sentences that denounce the conduct of offenders; and
- (f) promote public understanding of sentencing practices and procedures; and
- (g) set out the objectives of sentencing and related orders; and
- (h) recognise the interests of victims of offences.

GENERAL SENTENCING PRINCIPLES

- ensure that “the punishment fits the crime”
- discretion by Judges and Magistrates within a range of possible sentences
- maximum penalties
- mandatory minimum penalties eg. drink-driving offences
- aggravating factors
- mitigating factors
- conviction or non-conviction
- proportionality of sentence to offence committed
- totality of sentences on multiple charges for single defendant
- comparable ("parity of") sentences for co-offenders
- changing ("commuting") sentences e.g. life sentence commuted to a fixed term sentence

FACTORS CONSIDERED

Circumstances of the Offence

- Seriousness of the offence
- Prevalence of the type of offence
- Impact on victim – taking into account age/circumstances of victim
- Premeditation
- Degree of participation – leader, minor role?
- Aggravating or mitigating factors:
 - e.g. - any damage or injury caused
 - use of weapons
 - breach of trust
 - age; youth
 - coercion;
 - principal or secondary offender eg. accessory

Circumstances of the Offender

- Prior Convictions, including response to previous orders
- Plea of guilty
- Remorse, demonstrated for example by:
- Reparation for any injury, loss or damage made prior to sentencing
- Co-operation with the Police
- Character
- Background, including cultural background
- Age
- Means
- Physical condition/ mental capacity
- Prospects for rehabilitation
- Deterrent effect that any sentence may have on the person
- Alcohol/drugs but only to show out of normal character
- Parity with like offenders
- Special hardship

RANGE OF SENTENCING OPTIONS

- Imprisonment
- Drug Treatment Order
- Suspended term of imprisonment (partially or wholly)
- Home Detention Order (with electronic monitoring)
- Community Correction Order
- Probation Order (young offenders)
- Fine, Compensation Order, or Restitution Order
- Rehabilitation program order (family violence)
- Deferred sentencing order
- Adjournment with Undertakings (with or without a conviction)
- Record a conviction and discharge the offender
- Dismiss the charge without conviction

The range of sentencing orders set out by the Sentencing Act 1997 are found in section 7 of the Act as follows:

7. A court that finds a person guilty of an offence may, in accordance with this Act and subject to any enactment relating specifically to the offence –

- (a) record a conviction and order that the offender serve a term of imprisonment; or
- (ab) if the court is constituted by a magistrate or is the Supreme Court or the Court of Criminal Appeal,, record a conviction and make a drug treatment order under [Part 3A](#) in respect of the offender; or
- (b) record a conviction and order that the offender serve a term of imprisonment that is wholly or partly suspended; or
- (c) record a conviction and make a home detention order under [section 42AC](#) in respect of the offender, if the offender has attained the age of 18 years; or
- (d) with or without recording a conviction, make a community correction order under [section 42AN](#) in respect of the offender, if the offender has attained the age of 18 years; or
- (e) with or without recording a conviction, order the offender to pay a fine; or

- (ea) in the case of a family violence offence, with or without recording a conviction, make a rehabilitation program order; or
- (eb) adjourn the proceedings, grant bail under the [Bail Act 1994](#) and, by order, defer, in accordance with [Division 1](#) of [Part 8](#) , sentencing the offender until a date specified in the order; or
- (f) with or without recording a conviction, adjourn the proceedings for a period not exceeding 60 months and, on the offender giving an undertaking with conditions attached, order the release of the offender; or
- (g) record a conviction and order the discharge of the offender; or
- (h) without recording a conviction, order the dismissal of the charge for the offence; or
- (i) impose any other sentence or make any order, or any combination of orders, that the court is authorised to impose or make by this Act or any other enactment.

PAROLE

- Legislation and administration (Parole Board)
- Purpose
- Conditions
- Breach

SUPREME COURT - CASE SCENARIO

The factual scenario set out below is a fictional case study to be used in an exercise to apply sentencing principles and procedure to a fictional case.

STATE OF TASMANIA v. CHERIE ANN BROWN

D.O.B. 14/10/2002

CHARGE: Armed Robbery

At about 9.00 pm on Saturday 10 June 2023, a male employee was working at the Central Newsagency in Hobart Road, Kings Meadows. There were no customers in the shop at the time. Another employee was out the back having a coffee break.

A female wearing a balaclava, red jumper and blue jeans entered the premises. She held up a blood filled syringe and demanded money from the till. She said "If you don't give me the money right now, I will stick this into you."

The male employee responded by saying "Go away or I will call the police." The female then approached him waving the syringe in the vicinity of his left arm. Fearing that he would be harmed, the employee emptied the contents of the till into a brown paper bag and gave it to the female.

She ran out of the store and was seen running down Hobart Road.

The male employee called the Police. The Police located a female fitting the description in Betty's Café nearby. She had approximately \$600 on her person which could not be accounted for. She gave her name as Cherie Ann Brown. She was interviewed on video at the Launceston Police Station where she admitted to her involvement in the incident.

She stated that she needed the money for drugs. She also said she needed new shoes for her 6 year old son. She said she had no intention of harming anyone with the syringe but felt that it was a good weapon to use as people are "real scared of being infected." All but \$10 of the money stolen was recovered.

The Defendant was charged and bailed to reside with her mother at West Launceston.

Prior criminal history

2017	Stealing – Criminal Code section 234	No conviction recorded
2019	Drink driving Road Safety (Alcohol & Drugs) Act s6	Conviction recorded Driver licence disqualification 6 months Fine \$500
2020	Possession of prohibited substance Misuse of Drugs Act 2001 s24	Conviction recorded. \$100 fine
2021	Stealing – Criminal Code section 234	Conviction recorded with a conditional discharge requiring good behaviour for 2 years. (Current until November 2023)

Background

Cherie is the fifth child of a family of nine siblings. Her father was an alcoholic who abandoned his family when Cherie was nine. She has not seen him since. Her mother put her into foster care when she was 10 years old. She had twelve different foster homes and four different schools between the age of ten and sixteen. She was a poor student. She started using drugs and abusing alcohol when she was 17 and lived on the streets at that time. She was sexually abused by a group of youths in a park when she was 18. She has never been employed. She has had several relationships over the years. Her son, Ricky was born when she was living with a known criminal, who is currently in prison for wounding. At present she lives with her son in a Housing Commission home in Mowbray.

Issues

- Prevalence of robberies of small businesses
- Her personal history and circumstances, including being the mother of a young son
- Is a deterrent sentence needed?
- Does she have previous convictions, and what is their relevance?
- Rehabilitation - Is detention the most appropriate way to deal with this offence?
- Impact on the victim?

INDICTMENT

TASMANIA)
LAUNCESTON)
TO WIT)

IN THE SUPREME COURT OF TASMANIA
THE STATE OF TASMANIA against CHERIE ANN BROWN

This 10th day of May 2024.

MICHAEL TERRENCE PHIBBS Crown Law Officer on behalf of the State of Tasmania
charges CHERIE ANN BROWN with –

STATEMENT OF CRIME

ARMED ROBBERY – Contrary to Section 240 (3) of the Criminal Code.

PARTICULARS

CHERIE ANNE BROWN at Kings Meadows in Tasmania on the 10th day of June, 2023 stole \$600.00 from Gary Black and at that time was armed with an offensive weapon, namely a blood filled syringe.

Michael Terrence Phibbs
CROWN LAW OFFICER

Filed in the Supreme Court of Tasmania
this 10th day of May 2024.

John Smith
CLERK OF THE COURT

Criminal Code Act 1924 ("Criminal Code")

Armed Robbery

Robbery, &c.

240. (1) A person who steals anything and, immediately before, at, or immediately after the time of stealing that thing, uses or threatens to use violence to any person or property in order to obtain that thing or to prevent or overcome resistance to the stealing of that thing is guilty of a crime which is called robbery.

Charge: Robbery.

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(3) A person who commits robbery and is armed with a firearm or other dangerous or offensive weapon or instrument at the time of committing that robbery is guilty of a crime which is called armed robbery.

Charge: Armed robbery.

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(3) Subject to the provisions of the *Sentencing Act 1997* or of any other statute, and except where otherwise expressly provided, the punishment for any crime shall be by imprisonment for 21 years, or by fine, or by both such punishments, and shall be such as the judge of the court of trial shall think fit in the circumstances of each particular case.

VICTIM IMPACT STATEMENT

From: Gary Black

Re: Cherie Ann Brown

20 April 2024

I work at the Central Newsagency in Hobart Road, Kings Meadows. I am employed on a permanent basis and work from 2 to 10 pm Saturday to Thursday. On Saturday 10 June 2023 I started work as usual at 2 pm. My mate Andrew was also working that day. We started the day off normally by sorting the previous day's papers, sorting the display and leaving the excess papers out the back for the driver. We had been really busy all afternoon. Andrew had been on a drinking binge the night before and decided that he needed something to eat. He headed out the back to the tea room and left me in charge of the shop. It was about 9 pm, I think.

I was tidying up behind the front counter when a female customer entered the shop. I didn't really notice what she was wearing, but when she came closer to the counter I noticed she had a balaclava on her head. I remember wondering what she was up to. The closer she came I could see she had a blood-filled syringe in her hand. She demanded that I empty the till and hand her all the money. I opened the till and as I was very nervous I fumbled with the cash tray.

She threatened to stick the needle into me if I didn't hurry. I put all the money in a brown paper bag and gave it to her. She left the shop. I was so frightened, I couldn't stand up, and my legs just wouldn't hold me.

Andrew came from out the back after hearing me fall over. He came over and wondered what on earth was wrong. I was as white as a sheet and the till was open and the cash drawer minus the cash was on the floor. I remember him asking what had happened. All I could say was, "Call the cops, we've been robbed."

The rest of the evening passed in a blur. The police wanted to know what had happened. I had to explain it also to my boss. They wanted to know if I knew the person who took the money. They wanted to know if I had set the whole thing up. I hadn't, I was the innocent one here.

I still have nightmares about that day. I didn't work for a few weeks, I was just too frightened. I wasn't paid for that time, but have since returned to work. I won't stay in the shop by myself and I always jump when the bell rings confirming that the front door has opened. I live in fear that someone else will come and rob the shop.

I don't know if the blood in the syringe was HIV positive, but I have nightmares that the blood was splattered all over me and I died a long and painful death. None of this was my fault I was just doing my job and earning some money to keep my family.

I know that I am different at home now. I have two little girls. I won't let them go anywhere unless either my wife or I are with them. I won't answer the front door at home. All my friends know to come around the back; I won't open the front door any more. My wife has had the hardest time. I yell at her when I can't cope with what is happening and I know I am really mean to her. I can't help it I am still so frightened.

I am getting some help and hope that I will be better soon. It has been nine months already. I think I am making progress. I have been warned that it will take a while and I may never forget what happened.

Gary Black

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WORKSHEET

1. What crime has been committed?

See Indictment.

2. What is the penalty range for the crime?

See relevant legislation.

3. What should the sentence be?

PART I (FOR DISCUSSION WITHIN THE GROUP)

A. FACTORS TO TAKE INTO ACCOUNT :

- ☐ Issues listed in scenario
- ☐ Circumstances of the crime
- ☐ Victim impact
- ☐ Personal Circumstances of the Defendant
- ☐ Character of the Defendant
- ☐ Remorse (if any) shown by Defendant
- ☐ Financial Circumstances of the Defendant (relevant to capacity to pay fine)
- ☐ Prior convictions

B. SENTENCING OPTIONS :

- Sentence of imprisonment – with or without provision for parole?
- Suspended sentence – wholly or partly ?
- Drug Treatment Order – period?
- Home Detention – conditions ?
- Community Correction Order - up to 240 hours
- Fine ?
- Adjourn for up to 5 years & release on undertaking to be of good behaviour with conditions
- Record a conviction and discharge offender ?
- Dismiss charge ?
- Compensation Order?

PART 2 - YOUR SENTENCING DECISION:

A. Sentencing Decision:

- ☐ *Imprisonment formonths/ years
- ☐ Wholly / partly suspended formonths/ years
- ☐ Drug Treatment Order. Conditions:
- ☐ Home Detention Order. Conditions:
- ☐ Community Corrections Order forhours
- ☐ Driving disqualification for.....months/ years
- ☐ Probation order formonths/ years
Specify any special conditions -
.....
.....
- ☐ Fine for \$..... at the rate of \$.....per fortnight
- ☐ Adjourn for months & release on undertaking to be of good behaviour with conditions –
Specify.....
.....
- ☐ Discharge offender
- ☐ Dismiss charge

B. Why did you choose the sentence you've imposed? (3 main reasons)

-
-
-

C. Non-Parole Period (*only relevant to imprisonment)

- ☐ Yes : formonths/years

OR

- ☐ No