

**WOLLONGONG DISTRICT COURT**

**5 JUNE 2014**

**DRAFT JUDGMENT**

**R v Timothy WILLIAMS**

The offender TIMOTHY PHILLIP WILLIAMS appears for sentence following his plea of guilty to a charge of aggravated robbery with wounding, contrary to S. 96 of the Crimes Act, carrying a maximum penalty of 25 years imprisonment. He committed this robbery in the presence of co-offender Jamie Lee Haynes.

The Crown bundle of documents, Ex. A contains a statement of facts. A summary of those facts is as follows:-

In 2008, the offender received a substantial sentence for recklessly causing grievous bodily harm in company. He was released to parole on 5 September 2013.

On the evening of 6 October 2013, the offender was in the company of co-offender Haynes. She was on bail at the time for a variety of offences, including being armed with intent to commit an indictable offence and common assault. One of the conditions of bail was that she had to report to the Wollongong Police Station.

CCTV footage in the police station foyer shows the offender and Haynes walking into the police station at about 7.17 pm (6.10.2013). She completes her reporting at the counter and they walk out of the police station together. They then walk to the vicinity of Wollongong Railway Station on Crown Street.

The offence itself is clearly captured on CCTV. At 7.52 pm both offenders stopped at the western pedestrian walkway that leads from Crown Street down to the station. They stand there for a short time waiting for the victim to approach.

The victim was [REDACTED] He was a 24 year old originally from Eritrea and had been in a refugee camp in Ethiopia. He had only been in Australia for 5 days and knew only a few words of English.

This offender signalled for the victim to stop. The co-offender then walks a short distance away towards Crown Street and appears to be a look out. This offender then engages the victim in a conversation. The victim did not understand what was being said but did understand the word "money". Haynes then approached and handed this offender a backpack.

The offender removed cards from the backpack and began showing them to the victim. The victim is then seen to reach into his pocket and give the offender some coins, believing he was helping him.

At this stage, Haynes is back at Crown Street looking around. This offender then removes his thongs and then suddenly throws a vicious punch to the head of the victim, felling him to the ground. He starts reaching into the victim's pocket and continues to punch him in the head. The victim struggles to his feet but is grabbed from behind, hurled to the ground, where more punches are rained upon him. The offender then bent down and removed a necklace with a cross from around the victim's neck. He asked for his property but was again punched. The victim then managed to flee. He appears extremely disorientated and is shown on the footage to fall over twice as he was trying to get away.

The co-offender then approaches and picks up items that had fallen from the victim's hands.

Unable to speak English, the victim returned to his accommodation nearby. He received assistance from another Eritrean resident who contacted a caseworker. Police and ambulance were called. The victim was taken to Wollongong Hospital. He

suffered a laceration to the inside of his left earlobe that required suturing. He also lost a tooth and two others were missing. He also suffered an abrasion to the knee and haematoma to the left scalp and right cheek.

When police went back to the scene, they located the victim's tooth.

The victim stated that the following items were missing- his silver bracelet, silver necklace, headphones, sunglasses and \$60.00.

The following day, the co-offender HAYNES attended the police station to report on bail. She was again in company of this offender and they were both arrested. The offender declined to be interviewed.

The present case is a perfect example of why CCTV cameras are an invaluable investigative tool and on an ever increasing basis they are providing direct evidence of the commission of crimes.

A viewing of the footage is all that is needed to make an accurate assessment of the objective seriousness of this offence. It is clear that when the offenders reached the station pedestrian walkway, they were waiting for a victim. When the victim was stopped, it was also clear that there was a plan in action. The offender distracted the victim showing him the cards and slipped off his thongs immediately before launching his blitzkrieg attack.

What the footage also shows in my view, is neither offender is under the influence of drugs/alcohol. Their actions at the police station and at the walkway, do not display any impediment to their motor skills. The footage also serves to demonstrate the lie to any suggestion that the victim in any way provoked this altercation.

Any right minded person would view this as a sickening offence. It is the same type of mindless violence that can so easily lead to the death of an innocent citizen. Fortunately we are not dealing with such an outcome here.

Whilst the wound itself is towards the lower end of the scale, the violence perpetuated to effect the robbery certainly is not.

**Subjective Circumstances:**

The offender is now 26 years of age. He has an extensive criminal record. It indicates that since June 2006, he has spent only 6 months out of custody in the community. He was released on parole on 5 September 2013 and then re-arrested on 7 October 2013 following the commission of the present offence. I shall return to this issue a little later.

Ex. 1 is a report (dated 6.5.2014) of Dr. Mark Howard, Psychologist. The following background information is set out in that report. He is the eldest of 3 children. He also has a further 3 half siblings born to other relationships of his mother.

He was initially raised by both parents in the Newcastle area. He described a troubled upbringing as his father had alcohol abuse problems [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] as been a source of distress for him in subsequent years. However, he described his mother in a positive way and that she was able to provide for their everyday needs.

His parents separated in 1999 when he was about 11/12 years of age. His mother then entered another relationship and that partner also had problems with

alcohol

He attended mainstream primary and secondary education until Year 9. He always struggled with basic numeracy and literacy skills. Whilst he indicated he had attended special needs classes, he maintained that he was not required to repeat grades at any time.

He certainly acknowledged behavioural problems, stating that he would get into fights so he could get out of attending classes. He indicated he did not wish to exhibit learning difficulties in front of his peers.

He said his mother separated from his stepfather in about 2005 and the family relocated to Nelson Bay. He said that around this time, his behaviour "went downhill". I have already referred to his criminal record that indicates he has been imprisoned for most of his adult life.

Whilst in custody he has completed the equivalent of the Year 10 School Certificate. He reported that his capacities for basic skills such as literacy and numeracy have increasingly improved throughout adulthood. The psychologist commented that "informal testing indicated sound functional reading abilities for most everyday tasks".

He was engaged in some employment as a mechanic with his stepfather and labouring positions.

It is not surprising that he has been a regular user of illicit substances since 15 years. He began to use ice on a frequent basis and informed the psychologist that this use precipitated severe side effects such as psychosis, which precipitated his admission to a psychiatric unit at the age of 16-17 years. He said this scared him and he subsequently ceased use. He has been a long term abuser of alcohol.

It was the opinion of Dr. Howard that the results of testing and other available information are consistent with the possibility of mild intellectual disability. Dr. Howard also stated, the offender "did not present or report ongoing experience of common symptoms of psychosis or of severe mood disorder in recent years. While he disclosed some ongoing distress in relation to recurrent thoughts about his troubled upbringing and the abuse of himself and his sisters, it does not appear that the range and severity of these symptoms are consistent with relevant disorder such as post traumatic stress disorder (P.T.S.D.). Psychometric testing indicated relatively mild and subclinical symptoms of depression and anxiety at present".

On page 11 of the report, Dr. Howard stated "Mr. Williams' account indicated that his aggressive behaviour at the time of the index offence was relatively impulsive and reactive. A relevant factor in this regard is his below average intellectual functioning at baseline, which tends to be correlated with below average capacities for self regulation. It appears that Mr. Williams ability to control impulsivity and reason through his actions at the time of the offence may have been further compromised by alcohol intoxication".

Unfortunately this opinion of Dr. Howard was obviously based upon information supplied by the offender in respect of the offence at the time of consultation. That information is set out on page 8 under the heading- 'Factors Related to Offending'. That material simply demonstrates an ability by the offender to provide anyone who cares to listen with a version that he believes will cast him in the best possible light and indeed, to provide an excuse for his behaviour. He provides Dr. Howard with a palpably false version of his confrontation and vicious assault on an unsuspecting victim.

Had Dr. Howard had available to him the CCTV footage of the robbery, no doubt he would have subjected the offender's version to greater scrutiny.

Dr. Howard recorded that version as follows:-

"Mr. Williams recalled that in the hours prior to the index offence he had consumed alcohol while socialising with his partner. He disclosed that his alcohol intake was heavier than other past instances; he estimated drinking 2-3 longnecks of beer and 2-3 glasses of spirits. He reported being moderately intoxicated at the time.

Mr. Williams recalled that at the time of the index offence he was running late after socialising with his partner and at risk of breaking curfew... His reports indicated that he approached the victim of the offence in an attempt to sell his phonecard, with the aim of purchasing a train ticket for travel... He said the victim agreed to this transaction.

Mr. Williams maintained that after completing the transaction, the victim called him a "black bum" or made some other derogatory remark. He expressed beliefs that the victim had also adopted a somewhat aggressive stance at the time. He described feeling "defensive...offended" as a result. He described reacting aggressively with little prior thought, "hit him before he hit me...just a reaction sort of thing...didn't even think of hitting him...no intent before". He reported that shortly after the confrontation he experienced a degree of regret and surprise about his behaviour, "I thought, fuck off, what have I done?"...

Dr. Howard stated "At the time of interview Mr. Williams presented as somewhat ambivalent about his offending behaviour. He said, "I do and I don't" when asked whether the victim deserved to be assaulted, "he was smart to me, I bashed him, that was it". However, he also acknowledged that his actions were "bad" and a source of remorse, "I regret doing that" .

The CCTV footage shows that this is an incredibly distorted representation of the true facts. CCTV is now an invaluable aid in the detection of crime and the successful prosecution of it. Its widespread use is to be encouraged.

The presentation of a psychologist report in almost every criminal sentencing exercise has become the norm. In many instances, their only worth is that they set out background/family/educational history. Whilst it was appropriate to present this report detailing issues relevant to the offender's mental health and intellectual functioning, my consideration of this material has not allowed me to reach any favourable view of the offender's prospects of rehabilitation.

In my view, there is no material in this report suggesting any causal connection between the offender's mild intellectual disability and the commission of this particular offence.

### **Plea:**

The offender is entitled to have his plea of guilty taken into account in mitigation of penalty. Whilst the CCTV footage virtually ensured there would be a plea, it is nevertheless a plea at the earliest opportunity. I intend to reflect the utilitarian benefit to the criminal justice system by a discount of about 25%.

I have taken into account the purposes of sentencing set out in S. 3A of the Crimes (Sentencing Procedure) Act. With regard to S. 5 of that Act, given the objective seriousness of the offending conduct, I am satisfied no penalty other than imprisonment is appropriate.

The offender is still a relatively young man. As earlier indicated, it is most unfortunate that the offender has only spent 6 months in the community over the last 8 years. He is in danger of becoming institutionalised, if indeed, that has not already



occurred. Consideration of this factor will result in the imposition of a sentence somewhat less than I would otherwise have imposed. It also provides sufficient basis for a finding of special circumstances and varying the statutory ratio.

I have not overlooked that this offence breached parole and the offender has been serving balance of parole. However, the issue of totality has persuaded me that the sentence should also date from his arrest.

NPP of 6 years to date from 7/10/2013 and expire 6/10/2019

Additional term of 3 years to expire on 6/10/2022