

SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title: R v Hancock

Citation: [2021] ACTSC 52

Hearing Date: 12 February 2021

Decision Date: 16 March 2021

Before: Refshauge AJ

Decision:

1. The information for the charge of driving whilst disqualified be amended by omitting 'a repeat offender'.
2. For the first count of possessing a prohibited weapon, namely two blue-handled spring assist flick knives, Daniel Thomas Hancock be convicted and sentenced to one months imprisonment, to commence on 12 July 2020 to incorporate pre-sentence custody.
3. For the second count, possessing a prohibited weapon, namely a taser, Mr Hancock be convicted and sentenced to two months imprisonment, to commence on 12 July 2020.
4. For the third count, burglary, Mr Hancock be convicted and sentenced to 27 months imprisonment, to commence on 12 September 2020.
5. For the fourth count, theft, Mr Hancock be convicted and sentenced to 10 months imprisonment, to commence on 12 May 2022.
6. For the fifth count, theft, Mr Hancock be convicted and sentenced to 10 months imprisonment, to commence on 12 August 2022.
7. For the sixth count, theft, Mr Hancock be convicted and sentenced to 15 months imprisonment, to commence on 12 September 2022.
8. For the seventh count, theft, Mr Hancock be convicted and sentenced to 10 months imprisonment, to commence on 12 April 2023.
9. For the eighth count, theft, Mr Hancock be convicted and sentenced to 12 months imprisonment, to commence on 12 June 2023.
10. For the count of driving whilst disqualified, Mr Hancock be convicted and sentenced to two months imprisonment, to commence on 12 May 2024.
11. It be noted that this is an overall sentence of four years imprisonment, to commence on 12 July 2020 and end on 11 July 2024.
12. A Drug and Alcohol Treatment Order under s 12A of the *Crimes (Sentencing) Act 2005* (ACT) be made for Daniel Thomas Hancock, for the period from today to 15 March

2023, in respect of the offence of burglary, of which Mr Hancock has been convicted and for which a sentence of two years and three months imprisonment has been imposed and which is the primary offence.

13. The convictions and sentences for the five offences of theft, the two offences of possessing prohibited weapons, and the offence of driving whilst disqualified, being associated offences, be hereby incorporated into that Drug and Alcohol Treatment Order as part of the custodial part of that Order.
14. The sentence be suspended from today, 16 March 2021, until 11 July 2024, under s 80W of the *Crimes (Sentencing) Act 2005* (ACT).
15. For the treatment and supervision part of the Drug and Alcohol Treatment Order, it be ordered:
 - a. that Mr Hancock comply with the core conditions of that Order set out in s 80Y of the *Crimes (Sentencing) Act 2005* (ACT);
 - b. that Mr Hancock undertake detoxification at the Canberra Hospital Withdrawal Unit and, for that purpose, he present himself to that Unit and arrive there by 9:00 am on 17 March 2021 and remain there until 22 March 2021 and obey all the rules of the Unit and directions of the person in charge of the Unit;
 - c. that Mr Hancock complete the residential drug rehabilitation program conducted by Canberra Recovery Services at Fyshwick and, to that end, he be directed to travel directly from the Canberra Hospital Withdrawal Unit to Canberra Recovery Services on 22 March 2021 and arrive not later than 1:00 pm and that he admit himself to that program, remain in the program until it is completed and obey all the rules of the facility and the program, and any directions of the officer in charge of the facility;
 - d. that Mr Hancock not leave the Canberra Hospital Withdrawal Unit before 22 March 2021, nor Canberra Recovery Services before he completes the residential drug rehabilitation program, without the approval of the Court, but if he is discharged from either facility or otherwise leaves either facility, he presents himself to ACT Corrective Services by 4:00 pm on the next business day after he is discharged or leaves, with a view to having the Drug and Alcohol Treatment Order reviewed;

- e. that Mr Hancock undergo any program, treatment or counselling and urinalysis or other program as may be required by any member of the Treatment Order Team or by the Court from time to time;
 - f. that Mr Hancock comply with any directions of the Court from time to time about attendance at Court in person or by electronic means.
16. Further, pursuant to s 80ZA of the *Crimes (Sentencing) Act 2005* (ACT), Mr Hancock be required to sign an undertaking to comply with the offender's Good Behaviour obligations under the *Crimes (Sentence Administration) Act 2005* (ACT), from 16 March 2023 to 11 July 2024, with a probation condition that he accept the supervision of the Commissioner of ACT Corrective Services, or his delegate, and obey all directions of the person delegated to supervise him;
 17. Mr Hancock be directed to appear in Court on Wednesday 31 March 2021 at 12:30 pm by electronic means.
 18. Mr Hancock be directed to attend the Court Registry before leaving the Court today to sign the sealed copy of this Order.

Catchwords:

CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – Judgment and Punishment – Sentence – burglary – theft – possessing a prohibited weapon – driving whilst disqualified – pleas of guilty – whether person is a repeat offender in relation to the offence of driving whilst disqualified – amendment of indictment - victim impact statements – reparation order not made – time spent in rehabilitation and pre-sentence custody – prospects of rehabilitation – Drug and Alcohol Treatment Order made

Legislation Cited:

Crimes Act 1900 (ACT) s 264
Crimes Act 1900 (NSW) s 112
Crimes (Sentencing) Act 2005 (ACT) ss 7, 12A, 19, 33(1)(za), 46J, 46K, 63(2), 80W, 80Y, 80ZA, 80ZD(3), 110
Crimes (Sentence Administration) Act 2005 (ACT) ss 65, 116; Chapter 6A; Divisions 6A.3.7, 6A.3.8
Crimes (Sentencing Procedure) Act 1999 (NSW) s 25(2)
Criminal Code 2002 (ACT) ss 308, 311
Legislation Act 2001 (ACT) s 192, Dictionary (Part 1)
Magistrates Court Act 1930 (ACT) ss 90A, 90A(9), 90A(11), 90B
Prohibited Weapons Act 1996 (ACT) s 5; Schedule 1
Road Transport Act 2013 (NSW) s 54
Road Transport (Driver Licensing) Act 1999 (ACT) ss 31, 31(1), 31A, 32, 32(9)(a)
Supreme Court Act 1993 (ACT) ss 68D, 68F; Part 8

Cases Cited:

Boney v The Queen [2015] NSWCCA 291
Kelly v Ashby [2015] ACTSC 346; (2015) 73 MVR 360

Muldock v The Queen [2011] HCA 39; 244 CLR 120
Robbins v Horton (1980) 3 NTR 1
R v Bennett; R v Simonds [2020] ACTSC 221
R v Bessant [2020] ACTSC 365
R v Bright [1916] 2 KB 441
R v Carberry [2020] ACTSC 96
R v Clark [2019] ACTSC 147
R v Cole [2019] ACTSC 228
R v Crawford (No 1) [2020] ACTSC 245
R v De Simoni (1981) 147 CLR 383
R v Elphick (No 2) [2015] ACTSC 23
R v Featherstone (No 2) [2019] ACTSC 258; 14 ACTLR 242
R v Forrest (No 2) [2017] ACTSC 83
R v Horne [2017] ACTSC 36
R v John [2017] ACTSC 144
R v Matthews [2020] ACTSC 364
R v McCurley [2020] ACTSC 140
R v McHughes [2021] ACTSC 92
R v McMahon [2014] ACTSC 280
R v McMahon (No 2) [2017] ACTSC 299
R v Novakovic (a.k.a. Noland) (No 1) [2021] ACTSC 62
R v Pikula [2015] ACTSC 380
R v Ponfield [1999] NSWCCA 435; (1999) 48 NSWLR 327
R v Scott (1993) 42 FCR 1
R v Steen [2015] ACTSC 259
R v Tonna (No 1) [2020] ACTSC 360
R v Ware [2016] ACTSC 264
R v Whitelock [2019] ACTSC 396
R v Zdravkovic (No 3) [2020] ACTSC 258

Texts Cited: Explanatory Memorandum, Prohibited Weapons Bill 1996 (ACT)

Parties: The Queen (Crown)
 Daniel Thomas Hancock (Offender)

Representation: **Counsel**
 C Muthurajah; N Deakes (Crown)
 B Shelton (Offender)

Solicitors
 ACT Director of Public Prosecutions (Crown)
 Sharman Robertson Solicitors (Offender)

File Numbers: SCC 5 of 2021
 SCC 6 of 2021

REFSHAUGE AJ:

Introduction

1. Offences of violence are very serious; they usually result in physical injury but always in mental injury from both the physical injury and the commission of the offence itself.

Dishonesty offences are often regarded as less serious from that point of view but are still quite serious offences. Dishonesty offences such as burglary often do cause mental harm but also create feelings of fear and violation which undermine social cohesion and the basis of an open society as well as having a wider impact such as the financial impact of the general increase in insurance premiums and the like. Theft often deprives people of property that they have worked hard to acquire, and which often has great personal value.

2. I now have to sentence Daniel Thomas Hancock for an offence of burglary, five counts of theft, two counts of possessing a prohibited weapon and one count of driving whilst disqualified. He has pleaded guilty to each offence.
3. I have received the Crown Tender Bundle which included a Statement of Facts, Mr Hancock's Criminal History, two Victim Impact Statements, which were orally read out by the Crown counsel at the sentencing hearing, and a Drug and Alcohol Treatment Assessment of ACT Corrective Services dated 26 February 2021 and a Drug and Alcohol Sentencing List Suitability Assessment Report of Canberra Health Services dated also 26 February 2021, which included a case plan. The latter two documents constitute the Drug and Alcohol Treatment Assessments (**Suitability Assessments**), ordered under s 46J of the *Crimes (Sentencing) Act 2005* (ACT) (the **Sentencing Act**).
4. I have also received in the Crown Tender Bundle formal documentation, being a certificate under s 90A of the *Magistrates Court Act 1930* (ACT) and associated documents and the transfer documentation under s 90B of the same Act, as well as the Magistrates Court Bench Sheets and a Pre-sentence Report.
5. The Crown Tender Bundle included as well relevant documentation relating to the breach of Good Behaviour Orders that is constituted by these current offences, including the Crown Tender Bundle for the original offence. The tender of all this material was not subject to any objection and no statements in it were subject to any objection nor were they controverted by other evidence.
6. From this documentation I make the following findings.

The Facts

7. On 27 September 2019, Mr Hancock commenced leasing a storage unit at a commercial storage facility in Kambah, which gave him a personal identification number and an access code that he could use to enter the facility in a particular yard in which there were a number of storage units, each of which were rented to various people who had secured them by locks.
8. Between 1 October 2019 and 12 November 2019, he used the access code on 20 occasions. During this time, he proceeded to cut the padlocks of six storage units and replace them with padlocks for which he, and not the renter of the units, held the keys. He then proceeded to enter those units, none of which was he authorised to enter. These facts constitute an offence of burglary in respect of five of the units as a 'rolled up plea'.
9. Upon entry to these units, he stole various property of the various renters. In relation to one unit, he stole a 'Livly' brand black backpack, a Toshiba laptop and charger, five to six hard drives and two power banks, a travel pouch containing an Australian

passport, a HDFC bank cheque book, a wallet containing cash in the form of Indian rupees worth between \$A300 and \$A800, an Indian driver licence, an Indian tax office identification card and an HDFC bank debit card. He also took two white iPhones, a black Samsung Galaxy phone and external USB drives. These facts constituted the first charge of theft.

10. The theft was discovered when he attempted to use the Indian HDFC bank debit card to access 4,293 Indian rupees, worth, at the time, approximately \$A88.09. Some of the property, namely 15730 Indian rupees in mixed denominations (around \$A300), the backpack, the laptop and the charger, the hard drives and power banks, and an external USB drive, were later discovered in a garage at the residence of Mr Hancock in Theodore, to which only Mr Hancock had access. I had no value for the property apart from the cash. The owner, however, sought a Reparation Order for \$1,852 but provided no evidence of value to substantiate this.
11. On about 10 November 2019, Mr Hancock entered another storage unit from which he stole framed paintings, other artworks and photographs, a motorcycle helmet, a motorcycle leather jacket, cotton motorcycle gloves, motorcycle boots, car mats for a Nissan X-TRAIL, various ornaments and CDs, DVDs, stationery and documents. At the garage of Mr Hancock's residence at Theodore, ACT, some of the framed paintings and motorcycle boots were recovered. No value of the property was stated. These facts constitute a further charge of theft.
12. A third storage unit which Mr Hancock entered on the same day contained 20 boxes of comics estimated by the Australian Federal Police to have a value between \$8,000 and \$10,000, though the Agreed Statement of Facts incorrectly set the value at 'more than \$11,000'. Mr Hancock stole these. Police later recovered eight of those boxes in the garage of Mr Hancock's Theodore residence. These facts constituted the third charge of theft.
13. On 21 October 2019, Mr Hancock was disqualified from holding or obtaining a driver licence for two years when he was convicted in the ACT Magistrates Court for driving with a prescribed concentration of alcohol in his oral fluid or blood. On 10 November 2019, he drove a Holden Commodore motor vehicle to the Kambah storage facility and entered it by tailgating another vehicle into the facility. These are the facts of the charge of driving whilst disqualified. He was originally charged as a repeat offender and I will deal with that issue below (at [48]-[51]).
14. On or about 10 November 2019, Mr Hancock entered a fourth unit. He stole a plastic crate containing photo albums, school paperwork, personal paperwork and other documents including medication prescribed to the renter of the storage unit. While no value was given to the property, it clearly had significant sentimental and personal value. The only property recovered from the garage of Mr Hancock's residence at Theodore was the prescribed medication. These are the facts of the fourth charge of theft.
15. Sometime between 27 September 2019 and 11 November 2019, Mr Hancock entered a fifth unit at the Kambah storage facility and stole a Levante Air Curtain and approximately 100 boxes of fishing lures. The items were valued at \$29,000 but police did locate a large box containing 93 smaller boxes of fishing lures in the garage of Mr Hancock's Theodore residence. These facts constitute the fifth count of theft.

16. Police executed a search warrant at Mr Hancock's Theodore residence on 15 November 2019. At this time, they located two identical spring-loaded double-edged blades inside the coffee table drawers in the residence lounge room. Mr Hancock said that he did not know that it was illegal to possess them. The knives were however prohibited weapons under item 1B of Part 1.1 of Schedule 1 of the *Prohibited Weapons Act*. These facts constituted the first charge of possessing a prohibited weapon.
17. They also found a 98,000-volt handheld conducted electrical weapon, which it is agreed is known as a taser, an acronym for the Tom A. Swift Electrical Rifle that was invented by the American Jack Cover in the mid-1970s and named after the books which were a childhood favourite of Mr Lovell, being books about an inventor of amazing gadgets. These facts constituted the second charge of possessing a prohibited weapon since a taser is a prohibited weapon under item 4 of Part 1.4 of Schedule 1 of the *Prohibited Weapons Act 1996* (ACT).

The Proceedings

18. Following the search of his premises on 15 November 2019, Mr Hancock was arrested. He appeared in the Magistrates Court that day and was remanded in custody. The proceedings were adjourned.
19. After three adjournments, on the fourth appearance in court, he pleaded guilty on 13 December 2019 to the first charge of possessing a prohibited weapon, being the knives. The adjournments, however, were of relatively short duration, respectively 14 days, 5 days and 9 days, or just less than a month in total.
20. A prosecution brief was later provided on a date not advised to me and after seven adjournments, he appeared in court on 1 May 2020, over five months after his first appearance, and pleaded not guilty to possessing the electrical weapon, namely the taser. He did, however, plead guilty to that offence on 3 June 2020, after two more adjournments, just over a month later.
21. Despite the commission of the burglaries and theft offences between 27 September 2019 and 11 November 2019, they were not preferred against Mr Hancock in the Magistrates Court until 5 February 2020. On 1 May 2020, after two adjournments, on the third appearance in court, he pleaded not guilty to the offences. On 3 June 2020, just over a month later, though nearly four months since the charges were first laid against Mr Hancock, he pleaded guilty to all those offences.
22. Mr Hancock had remained in custody all that time. He was, however, granted bail on 17 June 2020 to attend the alcohol and other drug rehabilitation service conducted by Wayback Ltd at Harris Park in Sydney from 18 June 2020. He remained there until 23 July 2020 when he left, due, he told the Court, to drugs entering the Centre but not by him. He did not report to the Court in accordance with a condition of his bail and remained in the community.
23. He was arrested for breaching his bail on 12 October 2020. He was, however, granted bail again the next day to attend Canberra Recovery Services, a drug and alcohol recovery service conducted at Fyshwick by the Salvation Army, which he attended from 19 October 2020 and where he remained until 2 December 2020. He then remained in the community.

24. On 22 January 2021, he was committed for sentence on his pleas of guilty to this Court. The Magistrates Court, on committal, ordered a report of his eligibility for a Suitability Assessment for a Drug and Alcohol Treatment Order (a **Treatment Order**) under s 12A of the *Sentencing Act* and referred him to the Drug and Alcohol Sentencing List in this Court. This report on his eligibility is known as an Eligibility Assessment; for a description of such Eligibility Assessments, see *R v McHughes* [2021] ACTSC 92 at [7]. Mr Hancock appeared in this Court on 29 January 2021 when I ordered the Suitability Assessments and listed the matter for sentence on 12 March 2021. He has been in custody since his arrest on 15 November 2019 until 18 June 2020, a period of seven months and four days.
25. His counsel, Mr Bowan Shelton, in his helpful submissions, submitted that I should consider the time he spent at the Wayback Ltd rehabilitation facility and the Canberra Recovery Services as 'a quasi-custodial period'. Those two periods were for 35 days on the first occasion and 6 weeks and 2 days on the second.

The Offences

26. The courts, especially the High Court of Australia, have pointed out the importance of the maximum penalty set by the legislature for offences both because of the upper limit of any sentence to be imposed but also because it is the legislature's mandate and is a yardstick against which to assess the seriousness of the offence. See, for example, *Muldock v The Queen* [2011] HCA 39; 244 CLR 120 at 133; [31].
27. Burglary is an offence against s 311 of the *Criminal Code 2002* (ACT) which provides for a maximum penalty of 14 years imprisonment or a fine of \$224,000, or both. It is thus a serious offence and is to be treated by the courts as such. It is a serious offence in part because of the serious consequences it can have. Whether present or not, occupants whose houses have been the subject of the offence feel violated and become fearful. Indeed, that may happen for the burglary of other premises. Similarly, the offence undermines the very nature of an open and trusting community. It causes inconvenience if insurance claims have to be made and affects the wider community also by increasing those premiums.
28. In this case, the charge is what is known as a 'rolled-up count'; thus it encompasses the five burglaries of the five storage units that Mr Hancock entered as a trespasser intending to steal property from the owners of the property. Such counts require the adoption of a special approach to sentencing by the courts. I have discussed elsewhere the nature of rolled up counts (*R v Forrest (No 2)* [2017] ACTSC 83 at [161]-[164]) and summarised the approach for sentencing that a court should take to a rolled-up count in *R v John* [2017] ACTSC 144 at [107] where I said:

The approach may be summarised as follows:

- for sentencing purposes, the rolled up count is one charge and the sentence may not exceed the maximum penalty for the offence charged;
- nevertheless, the criminality encompassed within the count is greater than were the count to be constituted by only one offence;
- the sentence is not necessarily, and perhaps not usually, the sum of the sentences that would be imposed for the offences comprising the count, though in an appropriate case it may be; and

- the fact that the count is a rolled up count may have a bearing on the application of the relevant principles as to accumulation or concurrency.

This is the approach that I shall take.

29. As to the offence of burglary itself, it has been the subject of consideration in many decisions. Grove J in *R v Ponfield* [1999] NSWCCA 435; (1999) 48 NSWLR 327 at 337-8; [48] listed a number of factors that were relevant especially as aggravating features. I am not sure, however, that all the matters raised by his Honour are relevant. For example, the offence with which the court was there dealing, under s 112 of the *Crimes Act 1900* (NSW), included as an element the actual commission of a felony including, for example, a theft.
30. That does not apply to the offence with which I am now concerned. Thus, the value of property taken, which his Honour identified as an aggravating factor, should not be considered as that would be contrary to principle: see *R v De Simoni* (1981) 147 CLR 383.
31. Further, the New South Wales Court of Appeal has held in *Boney v The Queen* [2015] NSWCCA 291 at [18]-[20] that the commission of an offence while on conditional liberty is a matter of aggravation of sentence. It is not a factor relevant to the objective seriousness of the offence; it is rather a matter relevant to the subjective circumstances of the offender. That decision has been applied in this jurisdiction (*Amos v McCarron* [2017] ACTSC 6; 79 MVR 179 at 188: [77]).
32. That approach perhaps applies also to the fact that an offender has a prior record of particularly similar offences, which would go to an assessment of subjective matters and not to an evaluation of the objective seriousness of the offence.
33. Taking into the account the decision in *R v Ponfield* and decisions in this Court such as *R v Horne* [2017] ACTSC 36 at [18]-[22], *R v McMahon (No 2)* [2017] ACTSC 299 at [51], and *R v Bessant* [2020] ACTSC 365 at [16], the following factors seem appropriate to consider:
 - (a) whether the property on which the offender trespassed was residential, which would be more serious, although an underground car park in an apartment complex is perhaps not so serious, but not at the level of seriousness of, say, commercial premises;
 - (b) whether there was damage committed on entry or while the offender was in the premises, unless causing that damage is separately charged, and whether there was vandalism, scattering property of the premises around about and the like;
 - (c) whether the occupants of the premises were present or the burglary was committed at a time when they were likely to be present;
 - (d) the motivation for the burglary;
 - (e) whether there was premeditation or planning or organisation, especially professional organisation and execution;

- (f) whether there are on the premises, or were likely to be there, elderly, sick or disable persons, which is especially aggravating if the offender knows this;
 - (g) whether the offence is committed in a series of repeat incursions into the same premises; and
 - (h) the actual trauma suffered by the occupants.
34. In this case, not many of these factors were present. The premises were not residential premises and, though there were multiple incursions into the facility, there is no evidence that each individual unit was entered on multiple occasions, though his changing of the locks would have facilitated that. There is no evidence that Mr Hancock had carried out such an operation. The motivation is a little unclear, though Mr Hancock did tell the author of one of the Suitability Assessments that he probably would not have committed the offences had he not been intoxicated.
 35. The burglaries did, however, involve planning. He had obviously thought about the plan to gain access to the premises and then to cut the locks in the units. He had to acquire the necessary equipment and replace those locks with his own, which must have taken time, expense and effort to obtain. While the evidence suggests that other persons were on the storage facility premises on at least one occasion when Mr Hancock was also there and appears to have even entered one of the units, there is no evidence from which I could find that any storage unit occupant was present at the time.
 36. Theft is an offence prohibited by s 308 of the *Criminal Code* and attracts a maximum penalty of 10 years imprisonment or a fine of \$160,000, or both. As part of the course of conduct, including the burglary, it is common practice for the sentence for that theft to be made largely concurrent with the sentence for the offence of burglary: *R v McMahon* [2014] ACTSC 280 at [94].
 37. Again, sentencing for theft offences has been considered in a number of cases. The principal issue is the value of the property stolen. This, however, is not just the monetary value but also the sentimental value which people attach to some items of their property. Property of a personal nature, such as photographs or family memorabilia, is often irreplaceable. Property that can be replaced, such as passports, can be quite difficult to replace and can cause inconvenience to do so, and in the case of property such as, for example, credit cards, could cause inconvenience in their loss until replaced.
 38. In this case, the thefts were all of property that would justify a more severe sentence and justify a degree of accumulation. In the first case, the cash taken, although in Indian rupees, was worth between \$A300 and \$A800. The occupant has sought reparation of \$1,852 for the stolen items other than those already recovered. It is not clear whether this includes the cash or not. Also stolen were personal items including a passport and a hard drive containing family pictures that are irreplaceable, including images of the occupant's deceased father.
 39. In the second case, the occupant sought compensation of \$1,120. The offence had also caused her other financial loss as she had to return from working overseas to attend to the effect of the crimes and then return overseas. Many of the artworks were

irreplaceable as they had been gifted to her from locals in disadvantaged communities in the developing countries where she worked. Some of the artworks were recovered but it was unclear how many and how many were lost forever. She also lost valuable items that had personal meaning.

40. In the third case, the comic books stolen were valued at a substantial sum, but exactly how much is a little unclear as noted above (at [12]). The owner did recover some of them but he too sought a Reparation Order for those unrecovered items stolen from their storage unit in the sum of \$11,725.75.
41. In the fourth case, the items taken obviously had sentimental and personal value. The taking of the prescribed medication would have been serious, either in inconvenience or personal risk, but was eventually recovered.
42. Finally, in the fifth case, the value of the items stolen was set out in the charge at an approximate value of \$29,000 but it appears almost all the items were recovered.
43. Possessing a prohibited weapon is a crime under s 5 of the *Prohibited Weapons Act 1996* (ACT) which is punishable by a maximum penalty of 5 years imprisonment or a fine of \$80,000 or both. The section covers both possession and use. It appears that possession is a less serious version of the offence than use: see *R v Zdravkovic (No 3)* [2020] ACTSC 258 at [11]. This is especially so where there is no evidence of past or intended future use: *R v Cole* [2019] ACTSC 228 at [6].
44. There are a range of prohibited weapons listed as items in Schedule 1 of the Act and these include more serious and less serious weapons which will affect the seriousness with which the offence should be viewed: *R v Clark* [2019] ACTSC 147 at [15]. In this case, one of the weapons was a taser, the possession of which had been regarded by the court, where neither Crown nor defence counsel had made any contrary submissions, as at a lower level of objective seriousness: *R v Whitelock* [2019] ACTSC 396 at [8]-[9].
45. As for the knives, it was clear that the courts have taken a serious view of the use of knives. *R v Pikula* [2015] ACTSC 380 at [57]. It is not entirely clear; I did not hear submissions on the issue and the Prohibited Weapons Bill 1996 Explanatory Memorandum provides no assistance one way or the other, but it would appear from reading the Schedules as a whole that, in general terms, the items listed in the parts to Schedule 1 of the Act are in an ascending order of seriousness so far as the degree of danger from the relevant weapon is concerned. If so, that reinforces the views expressed above about the taser which is item 4 of 8 in Part 1.4 of that Schedule. In this case, the knives were found in item 1 of 9 in Part 1.1 of Schedule 1.
46. There was no evidence of past use or future intended use of either weapon. They were not particularly hidden but were also not on open display. Indeed, Mr Hancock told police that he had found the taser but had never intended to use it. As for the knives, he said that he collects knives and had purchased these but did not know that their possession was illegal.
47. The transferred charge of driving while disqualified is an offence against s 32(1)(a) of the *Road Transport (Driver Licensing) Act 1999* (ACT) (the **Driver Licensing Act**), for which the maximum penalty for a repeat offender is one year imprisonment or a fine of \$16,000, or both. It also provides for a person who is not a repeat offender, described

as 'a first offender', who is liable to a maximum penalty of six months imprisonment or a fine of \$8,000, or both.

48. I raised with the parties the question of whether Mr Hancock was, in fact, a repeat offender. The basis for the allegation in the charge was the earlier conviction on 24 February 2014 of driving whilst disqualified. The relevant definition of a repeat offender is in s 32(9)(a) of the *Driver Licensing Act*, which is as follows:

a person who is convicted of an offence against this section (the **current offence**) is a **repeat offender** in relation to the current offence if the person has been convicted, or found guilty, of an offence against this section within 5 years before being convicted of the current offence.

49. Since Mr Hancock will be convicted today, 16 March 2021, that is a period in excess of five years since the conviction in 2014. It is true that Mr Hancock has an earlier offence of driving whilst suspended, convicted on 2 February 2012, namely an offence under s 31A of the *Driver Licensing Act*, and two offences of being an unlicensed driver, convicted on 24 February 2014 and 21 October 2019, offences under s 31 of the *Driver Licensing Act*, but those convictions were also entered outside the 5-year period. Therefore, none of the aforementioned convictions are convictions under s 32 of the *Driver Licensing Act* and, therefore, would not fall within that definition.
50. It is also true that Mr Hancock has a finding of guilt in the Nowra Local Court on 10 September 2018 for driving whilst disqualified on 23 April 2018, within the five-year period, but again that is not an offence against this section, that is s 32 of the ACT *Driver Licensing Act*, and so does not make him a repeat offender for the purpose of this section. The latter action in the Nowra Local Court appears to have been taken under s 54 of the *Road Transport Act 2013* (NSW) and therefore not the ACT Act and, in any event, the proceedings were taken while Mr Hancock was not present and it seems likely, under s 25(2) of the *Crimes (Sentencing Procedure) Act 1999* (NSW), that he was not actually convicted.
51. In my view, Mr Hancock is not a repeat offender. Neither party submitted to the contrary. The question is what should be done. I could remit the proceedings to the Magistrates Court under s 68F of the *Supreme Court Act 1993* (ACT). There, the court could amend the information and proceed to sentence Mr Hancock. Given his history, that may result in an additional term of imprisonment which could require cancellation of any Treatment Order under s 80ZD(3) of the *Sentencing Act*, which is an order I may make.
52. I could dismiss the charge. I am not sure that that is an option still available since it seems to me, for the reasons set out below (at [58]), that the allegation that Mr Hancock is a repeat offender is a statutory aggravating factor and not an element of the offence. While, as pointed out in *R v Bright* [1916] 2 KB 441 at 444, such a circumstance must be alleged in an indictment, it does not seem to me that it is an element of the offence, thus it may be that I do not have jurisdiction to dismiss the charge.
53. Finally, I could amend the information and proceed to sentence Mr Hancock for the offence. Section 264 of the *Crimes Act 1900* (ACT) gives me the power to amend an indictment. While these proceedings have commenced by an information laid in the Magistrates Court, Part 1 of the Dictionary of the *Legislation Act 2001* (ACT), which is a dictionary for all ACT legislation, defines 'indictment' as including 'information'.

54. Of course, criminal proceedings in this Court have to be commenced by an indictment: *R v Scott* (1993) 42 FCR 1 at 7, per Hill J; at 23, per Cooper J. For a committal for sentence under s 90A of the *Magistrates Court Act*, however, s 90A(11) makes it clear that the committal is to proceed with the same powers of sentencing as 'if the accused person, on arraignment at any sittings of the court, had pleaded guilty to the offence charged on an indictment filed by the Attorney-General or the Attorney-General of the Commonwealth.' In my view, that effectively means that the information which sets out the charge becomes the indictment for the purpose of these proceedings. This seems consistent with the approach to the section taken by Mossop J in *R v Featherstone (No 2)* [2019] ACTSC 258; 14 ACTLR 242 at 248; [15]-[16].
55. This was, of course, a transferred charged under s 90B of the *Magistrates Court Act* and had to be dealt with under Part 8 of the *Supreme Court Act*. Section 68D of that Part also gives the court power to deal with that offence, that is, it confers jurisdiction where the committal has been made under s 90A of the *Magistrates Court Act*. This is a wide power. These provisions are not inconsistent with the interpretation I have given to the *Legislation Act* definition of 'indictment' and, indeed, seems to a relevant extent to support that approach. When amending an indictment, however, it cannot be made if the consequences would be that it would allow a new offence to be charged out of time: see *Robbins v Horton* (1980) 3 NTR 1 at 5; [40].
56. In this case, the maximum penalty for a first offender in relation to the offence of driving whilst disqualified is imprisonment for six months or a fine of \$8,000, or both. Under s 192 of the *Legislation Act*, a prosecution for an offence by an individual punishable by imprisonment for not longer than six months must be commenced not later than one year after the day of commission of the offence. Therefore, while the driving whilst disqualified prosecution may be commenced at any time if committed by a repeat offender, the offence committed by a first offender must be commenced within 12 months of its commission. Here, the offence was committed on 10 November 2019. Thus, to commence a prosecution on 16 March 2021 would be well out of time.
57. The principle of no amendment of the indictment after the limitation period has expired, however, is subject to a qualification. It is well established that particulars may be amended for they do not change the offence. Changed particulars do not amount to a different offence: *Chaudhary v Ducret* (1986) 11 FCR 163 at 173.
58. In this case, the allegation that Mr Hancock was a repeat offender was not, as such, a particular but a statutory aggravating factor. This is clear in that it does not appear in the statutory description of the offence but appears instead in the penalty provision. It has therefore to be pleaded: *R v De Simoni* at 389. It is, however, clear from *R v De Simoni*, for example, as noted by Wilson and Brennan JJ, that this does not make it a different offence. Thus, I consider that I have the power to amend the information on that for which I am asked to sentence Mr Hancock, namely the offence against s 32 of the *Driver Licensing Act*, by omitting the words 'a repeat offender' and I will do so.
59. The offence of driving whilst disqualified is, despite the relatively light maximum penalty, a serious offence as it amounts to a defiance of the court's order for disqualification: *R v Tonna (No 1)* [2020] ACTSC 360 at [30]. Matters relevant to the seriousness of the offence include the recency of the disqualification, the duration of driving, whether it was associated with other offences and the nature of the driving.

60. I did not have any information about the duration of the driving, though I can and do infer that it was, it appears, from at least Theodore to Kambah and back to Theodore. The disqualification was made less than a month prior to the driving, suggesting that the driving may have been contumacious. It was further associated with the burglaries and thefts. There was no suggestion of any bad driving.

Subjective Circumstances

61. Mr Hancock was born in Canberra nearly 46 years ago and raised here in the ACT with his younger sister until the family moved to a small country town in Tasmania, Scottsdale. He is reported to have found that experience somewhat of a struggle. The family returned to Canberra when he was 17 or 18 years old and he has remained here ever since. He reported a positive upbringing. His father is deceased and he is not close to his younger sister but has remained in contact with his mother with whom he has a good relationship. She is not aware of his current life experiences.
62. He had difficulties at school and was reportedly involved in many physical altercations though it did not cause him to get into trouble with the authorities as his one suspension was for smoking cannabis. He left school in Year 10 and then worked in a number of labouring positions in the construction industry until 2013, when he suffered a spinal injury while at work and later a head injury from a home invasion in the same year. He has been unemployed since then. He appears to have engaged in no further education since leaving school.
63. He has had two significant partners and, from the first relationship, he has an adult daughter but does not have contact with her. His most recent relationship ended in November 2019 and he remains single.
64. Mr Hancock started drinking alcohol at age 14, though he had previously tasted it apparently at age six or seven. His alcohol consumption became problematic for about 18 years, drinking daily until intoxication, but he stopped drinking at about age 32 and has not consumed any alcohol since.
65. He smoked cannabis, however, at age 10 and regularly used it in his teens, approximately daily except when he was in custody. He was using about a gram a day at the time of his current offending. He currently smokes every second day.
66. Mr Hancock first used methamphetamine at age 32. Use became immediately problematic with daily use at age 33, except during periods of incarceration. He would use a gram a day, though after a period of rehabilitation at Canberra Recovery Services, reduced his usage to once or twice a week.
67. He has had fleeting use of speed and MDMA (ecstasy) and occasionally uses N-dimethyltryptamine, which is also known as DMT.
68. Mr Hancock has undertaken some unspecified alcohol, tobacco and other drug courses in the community, but it appears they were nothing of significance.
69. He was bailed to attend the nine-month residential drug rehabilitation program conducted by Wayback limited in Sydney on 18 June 2020. He remained for 36 days before being discharged for using drugs. He said that there were lots of drugs available there among the residents.

70. In October 2020, Mr Hancock engaged in medically supervised withdrawal prior to admission to the residential drug rehabilitation program at Canberra Recovery Services in Fyshwick, which he entered on 19 October 2020. He remained there until 2 December 2020 when he was discharged for drug use.
71. Worryingly, he blamed another participant who had brought the drugs to the facility rather than acknowledging, even if only in part, his own responsibility especially after some six weeks in the program. Mr Hancock has been assessed as having the likelihood of a severe substance use disorder at the time of the offending behaviour for which he must be sentenced.
72. He is currently renting a room from a friend and plans to apply for public housing in Canberra after he is admitted into a residential drug rehabilitation facility. He has no plans to leave Canberra.
73. He claims that he was 'under the influence' when he committed the current offences and reportedly said that he would not have committed them had he not been intoxicated. Given the level of planning required, that is a little hard to accept, though his assertion seems likely to mean that his need to use, which is a direct consequence of his dependency, drove the need to carry out the burglaries and thefts.
74. Mr Hancock has not completely recovered from his injuries at work and experiences ongoing sciatica, that is, nerve pain in the leg, and neck pain. He is currently prescribed the maximum dose for a medication that treats pain, namely Pregabalin, which is more commonly known under the brand name Lyrica. He feels that his forgetfulness and eyesight concerns may be the result of the head injury referred to above (at [62]). According to ACT Health Services, he has engaged with mental health service providers for over a decade but on an inconsistent basis.
75. He has been assessed as having Post-Traumatic Stress Disorder, but no formal diagnosis has been made. He has been diagnosed as suffering from 'moderate to severe depression' and has experienced suicidal ideation. His general practitioner has referred him to see a psychologist, though he did not attend, and he has been prescribed anti-depressant medication whilst in custody, but a clinical psychologist recently reported that he had no acute symptoms of a major mental health illness.
76. Mr Hancock has a relatively substantial criminal record though not nearly as severe as many I have seen in this Court. He has 65 offences on his record [redacted for legal reasons]. The longest single number of offences relate to traffic matters including a conviction for dangerous driving. He has also committed two burglary offences. [Redacted for legal reasons].
77. [Redacted for legal reasons] he has committed 9 offences of dishonesty and 16 drug possession, use or supply offences. He has had prior offences of possession of a knife and five of driving while unlicensed or disqualified. He has offences of drug driving and driving under the influence of alcohol. He was at large between 23 July 2020 and 19 October 2020 and then since 2 December 2020 until the present day. There is no indication that he has committed further offences during either of those periods.
78. Mr Hancock has a history of committing offences while on conditional liberty. For example, while subject to an 18-month Good Behaviour Order made on 23 November 2018 for a charge of possessing, selling, and supplying drugs, he committed two

offences on 9 April 2019, of driving whilst unlicensed and having a prescribed drug in his oral fluid. While not directly relevant to these offences so far as sentencing itself is concerned, his criminal history is relevant to an assessment of his capacity or willingness to abide by court orders.

79. The Good Behaviour Order referred to above was breached by the traffic offences which he committed on 9 April 2019 and an Intensive Correction Order was made for the original offence when the Good Behaviour Order was cancelled for the further offending. No action was taken on the breach of the Good Behaviour Order in respect of another offence, namely of common assault, which was dealt with at the same time as the offence of possessing drugs for supply.
80. More importantly for these offences, he was, at the time of committing some of them, on bail for the traffic offences referred to above and while being assessed for his suitability for the Intensive Correction Order. The traffic offences which he had committed on 9 April 2019 were dealt with on 21 October 2019 and the Intensive Correction Order was imposed then, so Mr Hancock was also subject to that order while continuing to offend. Nevertheless, Mr Hancock has otherwise successfully complied with the Intensive Correction Order other than by commission of the further offences.
81. Since the order was made in the Magistrates Court, it is clear from s 65 of the *Crimes (Sentence Administration) Act 2005* (ACT) (the **Sentence Administration Act**), together with the definition in the Act's dictionary of the meaning of 'sentencing court' used in the section, that the Magistrates Court is the court that must deal with the breach of that order. That matter has now been resolved, as confirmed by the Crown.
82. Nevertheless, the court can, and I do, have regard to the fact that committing offences while on conditional liberty either on bail or under an Intensive Correction Order is a breach of the trust placed in the person to be in the community and not in custody.
83. That is also relevant to whether a further non-custodial option should be and can safely be imposed to address further offending. I note that the breach of the Intensive Correction Order has not resulted in any sentence that would be of difficulty to this Court. Nevertheless, it is also important not to give any sense that Mr Hancock is being punished twice for the breach of conditional liberty as I explained in *Kelly v Ashby* [2015] ACTSC 346; (2015) 73 MVR 360 at 367; [61].

Victim Impact Statements

84. As is usually the case, the Victim Impact Statements, made by two of the renters of the storage units that Mr Hancock burgled and from whom he stole items, make sobering reading. Although such statements made by victims of violent crimes are expected to describe trauma, pain and mental anguish, it is easy to overlook the trauma, pain and mental anguish that accompanies the sense of violation from being the victim of burglary and of losing records and photographs of family history, deceased relatives and other personal memorabilia that cannot be replaced.
85. One victim described the loss of personal belongings as causing him 'heartache, mental and emotional anguish for days'. He said that he could not sleep for a 'couple of weeks' as he reflected on items that were '[g]one forever'. He did not have receipts for some items which would have made insurance and reparation claims difficult, though he did not have insurance for some items. The process of identifying what was

stolen was fearful and hurtful in itself. The harm of the pain and thoughts of despair for matters which were lost added to the harm caused by financial loss.

86. The other victim wrote of being 'heartbroken to discover that some of my most precious paintings and other possessions were gone'. She cried a lot and she, too, experienced emotional difficulties in checking the boxes to identify what had gone. She was out of pocket for having to leave her job overseas to fly home and deal with the issue. She also felt 'violated and cheated'.
87. It was important that the Victims Impact Statements were read out by the Crown prosecutor so Mr Hancock, who may have already read them himself, nevertheless heard them and was confronted by the pain and mental stress that he had caused.

Rehabilitation

88. Mr Hancock has spent some time in rehabilitation. While in custody or on remand prior to the commission of these offences, he completed the 'first steps to AOD' and the anger management programs, both of six sessions. I have already referred to the short periods in residential drug rehabilitation above (at [25]). They were, however, disappointing in not preventing his relapse into drug use, though Mr Hancock referred to the non-abstinent environment there, which must have made it difficult for a person who is dependent on the use of drugs to resist. One, however, would have hoped that the programs and his commitment to it would have at least discouraged some level of relapse.
89. Despite that, it is a good sign that he has at last started to look seriously at addressing his rehabilitation. While I am not convinced that it has much effect on the term of imprisonment that must be imposed, in that not a great deal of progress towards rehabilitation has yet been made, it is certainly relevant to the way in which the term should be served.
90. The attempts need to be recognised, but cautiously, for, as yet, that is all that they are, attempts with little evidence of actual achievement except the apparent commitment to keep trying. He said to the author of one of the Suitability Assessments that he would like to 'get off drugs', namely 'ice and pot', and that he was 'trying to change ... [his] life'. He was emphatic at being sent to the CRS residential program, 'as he viewed residential treatment as being the only option that could assist him'. On a long-term basis, the author of that report maintains that a combination of residential and community-based alcohol, tobacco and other drug support is his only solution to recovery.
91. I was also asked by Mr Shelton, in his helpful and thoughtful submissions, to take into account the periods spent on residential drug rehabilitation as 'quasi-custodial period[s]'. This is an appropriate response in appropriate cases: *R v Elphick (No 2)* [2015] ACTSC 23 at [89]. It is, however, as said in that case (at [90]), not necessary to take into account time in rehabilitation on a one day of residential drug rehabilitation equalling one day in pre-sentence custody basis. It was said also, in that case (at [90]), that taking such periods into account does not necessarily require 'a "full accounting"'.
92. Other restrictive conditions are relevant to matters such as the limitation on liberty. I am aware that both facilities do allow limited, or what might be called "off campus", opportunities for being out of the restrictions of the facility, such as for the purposes of

shopping or family outings. It is also clear that access to drugs in a residential drug rehabilitation facility is not completely dissimilar to that found in the community. Nevertheless, I consider that some recognition to time spent in rehabilitation is appropriate, and I will give it.

Reparation

93. Under s 19 of the *Sentencing Act*, a sentencing court may make an order requiring an offender to make reparation to a victim for the loss or expense incurred by the offender's crime, by way of payment of money or otherwise. Three of the victims of Mr Hancock's crimes have sought to have such orders made in varying sums of money to which I have referred to above (at [38]-[40]). Under s 110 of the *Sentencing Act*, such an order must be made on evidence. That evidence, however, can come from available documents, such as written statements or admissions, depositions or other relevant documents, which might include an affidavit by a valuer or a repairer, admissions by the offender, or submissions made by or for anyone.
94. In this case, I only have submissions. They are, however, a little concerning. For example, the information provided by the Australian Federal Police in respect of the third theft asserts the value of the comics stolen to have been between \$8,000 and \$10,000. The Statement of Facts, however, refers to a value of \$11,000. A total of 8 of the 20 boxes of comics were recovered. The victim, however, has claimed \$11,725.75. While some costs may have been associated with the loss of the lock which Mr Hancock broke, there is no other explanation for the discrepancy.
95. In the other cases, the submissions are mere assertions of an amount with no explanation or other material supporting the basis of such a claim, which should ordinarily be provided. Usually, a compensation claim that is made will include receipts, valuations, or repair estimates. This is not required by the section, but the Court must clearly be satisfied that the amount is appropriate and reasonable. It must be just to both the victim and the offender.
96. In *R v Steen* [2015] ACTSC 259 at [51]-[52], I considered the approach to such orders where I said:

[51] ... Bell J made a most useful and thorough analysis of the principles surrounding the making of compensation orders in *RK v Mirik* (2009) 21 VR 623. His Honour made the following points:

- the making of such orders is discretionary;
- it is not wrong in principle, however, to order compensation against an offender without means;
- the order is a means of vindicating the invasion of the victim's rights by avoiding the need for expensive civil action;
- the court may have regard to the effect such an order may have on the rehabilitation of the offender and the means available to meet such an order. An order for compensation is not a punishment and is different in its effect on sentencing to a confiscation order;
- a lengthy period of payment is not reasonable; and
- compensation should generally only be ordered in straight forward cases.

[52] In this case, an order for compensation would be largely symbolic. In the United Kingdom it has been held that a compensation order should not be made where there is no realistic prospect of payment. See *R v Inwood* (1974) 60 Cr App Rep 70 at 73. That approach was followed in New Zealand in *R v Rollo* [1981] 2 NZLR 667 at 671-2, though legislation has since changed that situation there. Given Mr Steen's age and circumstances, I do not consider that a compensation order should be made.

97. I also note that Mr Shelton has pointed out that a Reparation Order is included in the definition of a fine for the purposes of fine enforcement: see s 116A of the *Sentence Administration Act*. Other examples of fines are all included in the provisions of Chapter 6A of the *Sentence Administration Act*, which also include a range of means to enforce fines that are otherwise not paid, including methods common in the execution of civil judgments such as Earnings Redirection Orders, Property Seizure Orders, and garnishee-like orders. These would result in compensation being paid to the victims claiming compensation. Other matters, however, would not benefit the victims such as voluntary community work under Division 6A.3.7 of that Act.
98. Finally, a court may impose a period of imprisonment for a fine defaulter: Division 6A.3.8 of the *Sentence Administration Act*. This, of course, could not benefit the victims and, indeed, would be contrary to the principle articulated by Bell J as noted above (at [96]) that such an order is not a punishment.
99. In this case, Mr Hancock has no assets and is not employed. If he is not in prison or required to attend residential drug rehabilitation, he will have no means with which to meet a Reparation Order. His limited education and employment experience does not augur well for employment after his release from either of those options. Indeed, pressure to pay under a possible threat of imprisonment may encourage Mr Hancock to seek out criminal means of meeting the obligation.
100. While not making an order would ordinarily mean that the victims could only proceed by a civil claim, in this case, the convictions that I will enter will greatly assist them in establishing Mr Hancock's liability, though not in determining the quantum of their claims. In any event, I have expressed some concerns above (at [94]) about the adequacy of the evidence for this purpose.
101. I note also that the pressure of the payment of such compensation may interfere with any drug rehabilitation on a residential basis to which Mr Hancock is ordered to carry out and, certainly, for a significant period of his imprisonment, he would not be in any position to make any such payment. I will accordingly not make a Reparation Order in this matter.

Sentencing Practice

102. It is, as set out in s 33(1)(za) of the *Sentencing Act*, required that the court take into account 'current sentencing practice'. I have discussed that requirement and the relevant decisions in *R v Matthews* [2020] ACTSC 364 at [44]-[61]. I will accept that approach as noted and note the cases to which I there refer. I note what Murrell CJ said in *R v Bennett; R v Simonds* [2020] ACTSC 221 at [85] which is as follows:

I am aware of the limitations of statistical information, but have referred to the ACT Sentencing Database. This shows that, as at February 2019, sentences for theft were typically six to 18 months' imprisonment (often 12 months' imprisonment). For burglary offences, sentences were typically between one and three years' imprisonment (often 18 months to two years' imprisonment) and aggravated burglary offences were typically

between 18 months and three years and six months' imprisonment (often two to three years' imprisonment). Commonly, where an offender is sentenced for a theft associated with the burglary, the sentence for the theft is made concurrent with that for the burglary.

103. The Crown referred, in their helpful, comprehensive and thorough submissions, to a number of decisions said to be of assistance. These are *R v Carberry* [2020] ACTSC 96, to which I referred in *R v Matthews*, *R v Ware* [2016] ACTSC 264 and *R v McCurley* [2020] ACTSC 140. The Crown also referred to two decisions of mine, namely *R v Novakovic (a.k.a. Noland) (No 1)* [2021] ACTSC 62 and *R v Crawford (No 1)* [2020] ACTSC 245. None were, unsurprisingly, identical, but they were nonetheless helpful. I do not propose to summarise or note any of the relevant differences, but I take them into account in the manner required.

Consideration

104. Section 7 of the *Sentencing Act* sets out the purposes of sentencing as the legislature prescribes it. A sentencing court must have regard to those purposes. The nature of these offences, especially their effect on the victims of the burglary and theft offences and on the community more broadly, requires punishment and general deterrence to feature in the sentences for them. The sentences should also protect the community and a stern response to the prohibited weapons offences is part of that.
105. While Mr Hancock has a significant Criminal Record, there is not a great number of prior dishonesty offences of the type that he has now committed, so personal deterrence is perhaps of lesser significance, though he is to be shown that continued criminal activity is unacceptable. His continued flouting of the traffic regulations, especially in relation to driving whilst not having the authority to do so, however, does warrant a deterrent response. His conduct is unacceptable, and the sentence must denounce his behaviour. Importantly, especially as no Reparation Order is to be made, the harm suffered by the victims of his crimes must see the sentence as recognising the harm that has been done to them. I shall approach the sentence in this way.
106. Mr Hancock has pleaded guilty to the offences. In some cases, this was at an early stage. In others, it occurred a little later. While it is appropriate to await delivery of the prosecution brief of evidence, as he did, it is difficult to see why he did not plead guilty earlier, especially as he was likely to have known all that was necessary to make informed decisions as to the offences of burglary and theft. Nevertheless, despite the number of adjournments, many were for short periods. All the pleas of guilty were entered in the Magistrates Court. I regard them as relatively early pleas, which justify a significant discount to the sentence I would have otherwise imposed.
107. Mr Hancock had spent periods of time in pre-sentence custody. I propose to take that into account by backdating the start of the sentence under s 63(2) of the *Sentencing Act*. I will take into account the periods of time spent in residential drug rehabilitation by a period of backdating as well, but not on an accounting basis, where one day in residential drug rehabilitation necessarily amounts to a backdating of one day in custody (see [91] above).
108. There are, of course, multiple offences. I have to impose a sentence on each and I have carefully considered the length of each sentence to ensure it is just and adequate, and also to ensure that Mr Hancock is not punished twice.

109. I have also to consider whether the sentences should be partly or wholly concurrent because, for example, they are part of the same course of conduct or contain common elements. I referred to this above (at [36]) in the relationship between the theft and burglary offences. I have then considered the length of the total term of the sentence arrived at to ensure that the principle of totality is respected and that the total sentence adequately reflects the criminality of the offences committed but no more than that, and that the total sentence is not excessive but will leave open the realistic prospect of reform and maintain the hope required for Mr Hancock to take an effective part in the community and realise his aims when he is released.
110. This may result in what is seen as some leniency, in that some sentences are made concurrent, but, while the total criminality of Mr Hancock is an important factor, his growing awareness of the need for rehabilitation is also important as is the circumstances of his early introduction to drug use. Thus, it requires a sentence proportionate to his culpability for the crimes, the effect on the community, but also Mr Hancock's subjective circumstances and the value of reform to both the community and to himself. I am satisfied, however, that no other sentence but a sentence of imprisonment is appropriate and just for the offences he has committed.

Sentence

His Honours then spoke directly to the accused:

111. Mr Hancock, please stand.
112. I amend the information for the charge of driving whilst disqualified by omitting 'a repeat offender'.
113. For the first count of possessing a prohibited weapon, namely two blue-handled spring assist flick knives, I convict you and sentence you to one months imprisonment, to commence on 12 July 2020 to incorporate pre-sentence custody. Had you not pleaded guilty, I would have sentenced you to two months imprisonment.
114. For the second count, possessing a prohibited weapon, namely a taser, I convict you and sentence you to two months imprisonment to commence on 12 July 2020. That is to be cumulative as to one month on the sentence of imprisonment for the first count. Had you not pleaded guilty, I would have sentenced you to three months imprisonment.
115. For the third count, burglary, I convict you and sentence you to 27 months imprisonment to commence on 12 September 2020. That is to be entirely cumulative on the sentence for the second count, namely possessing a prohibited weapon. Had you not pleaded guilty, I would have sentenced you to 34 months imprisonment.
116. For the fourth count, theft, I convict you and impose a sentence of 10 months imprisonment, to commence on 12 May 2022, that is to be cumulative as to three months on the sentence for burglary. Had you not pleaded guilty, I would have sentenced you to 13 months imprisonment.
117. For the fifth count, theft, I convict you and I sentence you to 10 months imprisonment, to commence on 12 August 2022. That is to be cumulative as to three months on the fourth count, being a count of theft. Had you not pleaded guilty, I would have sentenced you to 13 months imprisonment.

118. For the sixth count, theft, I convict you and I sentence you to 15 months imprisonment to commence on 12 September 2022. That is to be cumulative as to six months on the fifth count, being theft. Had you not pleaded guilty, I would have sentenced you to 19 months imprisonment.
119. For the seventh count, namely theft, I convict you and I sentence you to 10 months imprisonment to commence on 12 April 2023. That is to be cumulative as to two months imprisonment on the sixth count, being theft. Had you not pleaded guilty, I would have sentenced you to 12 months imprisonment.
120. For the eighth count, theft, I convict you and I sentence you to 12 months imprisonment to commence on 12 June 2023. That is to be cumulative as to four months on the sentence for the seventh count, being theft. Had you not pleaded guilty, I would have sentenced you to 15 months imprisonment.
121. For the count of driving whilst disqualified, I sentence you to two months imprisonment to commence on 12 May 2024. That is to be cumulative as to one month cumulative on count eight, being theft. Had you not pleaded guilty, I would have sentenced you to three months imprisonment.
122. You may be seated.
123. That is an overall sentence of four years imprisonment, to commence on 12 July 2020 and end on 11 July 2024.
124. I then consider the eligibility requirements for a Treatment Order under s 12A of the *Sentencing Act*. I note that Mr Hancock has been sentenced to a term of imprisonment for burglary, the third count, of 27 months imprisonment, which is more than the minimum period of 12 months required under s 12A of the *Sentencing Act*, and to a total term of imprisonment of not more than four years. I also note that he is not currently subject to any other 'sentencing order' within the meaning of s 12A of the *Sentencing Act*. I am also satisfied that Mr Hancock is likely to be a resident in the ACT for the next two years.
125. I am satisfied that the Treatment Order regime has been explained to him and that he has had an opportunity to ask questions about it and to have them answered. I am satisfied that he has given informed consent to the making of such an order. I am satisfied that Mr Hancock is dependent on methamphetamine and that his dependency substantially contributed to the commission of the burglary offence.
126. Accordingly, I am satisfied that he is eligible to be subject to a Treatment Order.
127. I have carefully read the Suitability Assessments. They are referred to above (at [3]). They are comprehensive and have been of considerable assistance in the preparation of these sentencing remarks and in deciding how to proceed. I note that both reports have recommended that Mr Hancock is suitable for a Treatment Order. Mr Hancock shows a willingness to rehabilitate and has accepted that it is the only way forward for him.
128. I have not identified any indicators of unsuitability for a Treatment Order as set out in Table 46K of the *Sentencing Act*. Canberra Health Services have prepared a treatment plan, which is termed a 'Case Plan', which requires him to undertake the residential

drug rehabilitation program at Canberra Recovery Services for nine months or more. Prior to that, he is required to spend time at the Canberra Hospital Withdrawal Unit.

129. Accordingly, I am satisfied that Mr Hancock is suitable for a Treatment Order and that it is appropriate for one to be made.
130. Finally, I note that, although I have commenced the sentence of imprisonment from 27 September 2020, which period, from that date until today, has, in part, been served in custody, and that the sentence must now be suspended, this does not prevent Mr Hancock from being subject to a Treatment Order for the reasons set out in *R v Crawford (No 1)* at [91]-[111].

Drug and Alcohol Treatment Order

His Honour spoken directly to the accused again:

131. Mr Hancock, please stand again.
132. I make a Drug and Alcohol Treatment Order under s 12A of the *Crimes (Sentencing) Act 2005* (ACT) for you, for the period from today to 15 March 2023, in respect of the offence of burglary, of which I have convicted you and for which I have imposed a sentence of two years and three months imprisonment and which is the primary offence.
133. I hereby incorporate the convictions and sentences for the five offences of theft, the two offences of possessing prohibited weapons, and the offence of driving whilst disqualified, being associated offences, into that Drug and Alcohol Treatment Order as part of the custodial part of that Order.
134. I suspend the sentence from today, 16 March 2021, until 11 July 2024, under s 80W of the *Crimes (Sentencing) Act 2005* (ACT).
135. For the treatment and supervision part of the Drug and Alcohol Treatment Order, I order:
- (a) that you comply with the core conditions of that Order set out in s 80Y of the *Crimes (Sentencing) Act 2005* (ACT);
 - (b) that you undertake detoxification at the Canberra Hospital Withdrawal Unit and, for that purpose, you present yourself to that Unit and you arrive there by 9:00 am on 17 March 2021 and remain there until 22 March 2021, and obey all the rules of the Unit and directions of the person in charge of the Unit;
 - (c) that you complete the residential drug rehabilitation program conducted by Canberra Recovery Services at Fyshwick and, to that end, I direct that you travel directly from the Canberra Hospital Withdrawal Unit to Canberra Recovery Services on 22 March 2021 and arrive not later than 1:00 pm and that you admit yourself to that program, remain in the program until it is completed and obey all the rules of the facility and the program, and any directions of the officer in charge of the facility;
 - (d) that you not leave the Canberra Hospital Withdrawal Unit before 22 March 2021, nor Canberra Recovery Services before you complete the residential drug rehabilitation program, without the approval of the Court, but if you are

discharged from either facility or otherwise leave either facility, you present yourself to ACT Corrective Services by 4:00 pm on the next business day after you are discharged or leave, with a view to having the Drug and Alcohol Treatment Order reviewed;

- (e) that you undergo any program, treatment or counselling and urinalysis or other program as may be required by any member of the Treatment Order Team or by the Court from time to time;
- (f) that you comply with any directions of the Court from time to time about attendance at Court in person or by electronic means.

136. Further, pursuant to s 80ZA of the *Crimes (Sentencing) Act 2005* (ACT), I require you to sign an undertaking to comply with the offender's Good Behaviour obligations under the *Crimes (Sentence Administration) Act 2005* (ACT), from 16 March 2023 to 11 July 2024, with a probation condition that you accept supervision of the Commissioner of ACT Corrective Services, or his delegate, and obey all directions of the person delegated to supervise you;
137. I direct that you appear in Court on Wednesday 31 March 2021 at 12:30 pm by electronic means.
138. I direct that you attend the Court Registry before leaving the Court today to sign the sealed copy of this Order.

His Honour then spoke directly to the accused again:

139. Mr Hancock, that is a lot of legal stuff to take into account. You been around the courts a bit, with 65 prior offences, so you know a bit about what is going on.
140. The bottom line is that you have committed pretty serious offences. You are lucky, in a sense, in that the burglaries have been rolled-up counts and have therefore been treated as one count. They are part of a course of conduct in any event, but they could have been addressed with much more severity. The maximum penalty is 14 years imprisonment and 5 burglaries each multiplied by 2 years or so could easily earn that length, but that outcome would not be in accordance with the principles of sentencing and totality. But nevertheless, they are very serious offences.
141. You have heard, and I hope you have taken into account, that your thefts are not just pinching, in effect, valuables from people. They have caused mental harm and have destroyed property that victims have personal connections with. Indeed, in one case, the stolen items included a photograph of his deceased father that he will have either no photographs of again, or none of those particular photographs again.
142. These are serious matters, nevertheless. It is accepted that a very considerable consideration is the fact that you are a person who has a dependency on drugs and that that was a considerable contributing factor to your criminal offending and I have therefore taken the step, which is available under the legislation, of giving you an opportunity to engage in the rehabilitation that you say you want under the Treatment Order.
143. That is a privilege because it means you will not serve any more of the four year sentence if you behave yourself and undertake the rehabilitation for a period of two years. There is then a Good Behaviour Order, between the end of the two year

Treatment Order and the end of the whole sentence, that you are to undertake. What is really important is that you commit to that and show to the victims, many of whom will appreciate your rehabilitation, that your participation in rehabilitation will, in some part, recognise the harm that you have done to them because they will recognise that you will, in that event, learn how to not harm other people.

144. You must also take the Treatment Order seriously and comply with its terms. One of the important things about the Treatment Order is to obey the conditions. You heard, before I sentenced you, about a young man who had gone to Canberra Recovery Services and who left without the approval of the Court. He had, however, reported to ACT Corrective Services, which is a condition of his Treatment Order, but the mere leaving seemed to me sufficiently serious to justify a few days in prison. If you do not turn up, or if you leave and do not turn up, then the chances are likely that the Treatment Order will be cancelled, and you will have to spend the rest of the four years that you have not served to date, in custody.
145. So, the stakes are high, but you owe it to yourself, and principally to yourself, to take this opportunity. You are now facing an opportunity which you can take and make something of your life. You are not at the end of your life. You have many years to reach before you get to my elevated age and term of life. You can do something for yourself and for the community before that point. This is your opportunity to do so. Many people have gone through these kinds of Treatment Orders in this Court and elsewhere in other jurisdictions and come out and have made something of themselves. This is your opportunity.
146. Your criminality is not so entrenched and not so serious that you cannot rise above it and so I do urge you to do that. If you are offered drugs, do not take them. You will see me frequently. For a while, you will see me once a week. If there are problems, tell me about them. If you are uncomfortable about saying it in public, tell your lawyer, and that will be a solicitor from Legal Aid ACT. Mr Shelton has assisted you very significantly to date, but he will be replaced by a Legal Aid ACT solicitor from now on. Tell your lawyer to ask me to hear your problems in confidence and I will close the court if necessary, so that I can hear what you have to say so that you do not bottle it up and end up not saying anything, especially in a situation where something happens and you leave or are chucked out of rehabilitation.
147. A really important thing in drug rehabilitation is honesty. Most importantly, be honest with yourself, but also be honest with your counsellors, your case managers, whom you will see very frequently at least for a few months, and help them to direct the way in which you can help yourself. That honesty is really important.
148. So this is an opportunity. I hope you take it. It will be good for the community, but it will be good for you and for your mother to do this.
149. I wish you luck. This Court is here to try and help you rise above the drug dependency and the criminality, and we will work to try and make you succeed in that. I certainly hope so, and I wish you good luck.
150. You have been on bail. You know that you are going to go to Canberra Recovery Services. But first of all, you are going to go to the Canberra Hospital Withdrawal Unit for detox and stay there. That will not be easy, but you will do it. Then you will go to Canberra Recovery Services on Monday and you will stay there and you will come and

talk to me. If there are problems, we will try and solve them. I do not guarantee you that we can solve them all, but we can at least try.

151. If it all goes pear-shaped, then you may have to go back to jail, but we will certainly work hard to prevent that. There are a lot of people in the Treatment Order Team that will be working hard to help you make rehabilitation a success, so take this opportunity, and good luck.

152. You may be seated.

I certify that the preceding one hundred and fifty-two [152] numbered paragraphs are a true copy of the Reasons for Sentence of his Honour Acting Justice Refshauge.

Associate: Samuel Xiang

Date: 21 July 2021