

**IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL JURISDICTION**

CASE NO. CR-18-02204

DIRECTOR OF PUBLIC PROSECUTIONS

-v-

BILLIE COMENSOLI

OUTLINE OF SUBMISSIONS

Date of Document:
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Mr Comensoli has pleaded guilty to charges on indictment number J116466130.1, the most serious being aggravated burglary (intent to steal). Mr Comensoli accepts the factual basis for the offences, as set out in the prosecution opening filed with the Court.

He has served 476 days by way of pre-sentence detention, having been remanded in custody on these matters on 21 June 2018.

Aggravated burglary is an objectively serious offence. However, in this instance it is contended that the appropriate sentence is a combination of imprisonment together with a community corrections order, noting of course that Mr Comensoli falls to be sentenced for a non-confrontational aggravated burglary.

Objective gravity of offending

Offending of a low order

It is submitted that this example of aggravated burglary is at the lower end in terms of gravity and seriousness as seen by this Court, being an example absent any violence and/or weapons. Mr Comensoli's only intent was to participate in further dishonest behaviour and in furtherance of this objective, he had been reckless as to whether or not anyone was inside the house at the time.

Accepting that this is a non-confrontational aggravated burglary, the circumstances of the offence are as follows:

- i. the accused acts alone and not in the company of others;

- ii. the incursion into the victim's home is limited;
- iii. the incident is short-lived, lasting a matter of minutes only;
- iv. there is no weapon used.

The defence will rely upon the authority of *Bradshaw v The Queen* [2017] VSCA 273 and the County Court decision of *DPP v Spokes* [2016] VCC 498 for the proposition that time served in combination with a CCO is still be within the range of sentences this Court imposes for aggravated burglary; noting that aggravated burglaries such as the instant matter (i.e. intent to steal/person present) are a less serious species of the offence and are generally heard in the Magistrates' Court.

Factors in mitigation

Drug fuelled offending

The offending is causally linked to the accused's drug use. This is not, in and of itself, relied upon as a factor in mitigation, however it gives some context and explanation for this offending. This is not offending that is motivated by greed, but rather it was carried out for the purpose of funding Mr Comensoli's pernicious drug habit at the time.

In the psychological report of Mr Warren Simmons, dated 3 October 2019, at paragraph 32 he opines:

"With regard to the matters currently before the Court, these appear to have been related to Mr Comensoli's substance use, indicating that he was offending to fund his drug use but also acknowledged that he had been making poor decisions because he was drug affected at the time. At no point did Mr Comensoli attempt to use this to minimise his behaviour, but rather to explain why he acted as he did..."

In *McKee & Brooks*, two young heroin-addicted offenders, committed several armed robberies. Buchanan JA said at 13:

"An addiction to heroin may also bear upon the question of rehabilitation, where the prospects of success will often depend upon the likelihood of the addiction being successfully treated [see, for example, R v Ma (1999) 107 A Crim R 252 at 255; R v Jarman [2001] NSWCCA 178; R v Horne [1999] NSWCCA 391 at [13] per Greg James, J]. In my view, a sentencing judge may have regard to the circumstances which led to an addiction that caused the commission of the offence and to whether the addiction has continued or is being treated in deciding upon a sentence appropriately tailored to the personal circumstances of the offender."

Mr Comensoli has developed a newfound insight and understanding into the nexus between his drug use and his offending behaviour. He is motivated to abstain from drug use in the future, and consequently he has taken significant steps towards that goal whilst in custody.

Youth

Mr Comensoli was 25 years of age during the commission of the offences. He falls to be sentenced at the age of 27. Section 3(1) of the *Sentencing Act* 1991 defines the age of 21 as the limit of the statutory class of 'young offenders'. However, the law has long recognised a body of principles applying to youthful offenders generally, and the application of these principles is not limited to those persons under the age of 21.

Of course, as the age of an offender increases, the mitigatory force of the principles of youth must diminish. It's submitted that at 27 years of age, Mr Comensoli remains *somewhat* youthful, and as such his rehabilitation should have primacy and be a focus in the sentencing exercise. Given his age,

he has not yet become hardened or institutionalised, and he has the capacity to rehabilitate himself and live a meaningful life. The protection of the community is best served by the rehabilitation of offenders.

Antecedents

Mr Comensoli has relevant antecedents, however the majority of his offending has been dealt with summarily and appropriately the sentences reflect the objective gravity of those matters. He has a single prior for aggravated burglary (intent to steal) that was dealt with at the Sunshine Magistrates' Court on 23 October 2015 to which he was sentenced 140 days' imprisonment together with other matters.

Salutary effect of custody

Mr Comensoli instructs that his 476 days in custody have had a chastening effect upon him. At times he was fearful for his personal safety and was also exposed to individuals offering him drugs. He has now been abstinent from drugs for 16 months and intends to remain abstinent in the community upon his release. Mr Comensoli instructs that his partner and his family are now his priority and that he wishes to live a 'normal' life away from drugs and all antisocial behaviour.

Mr Comensoli has completed a number of behavioural and drug and alcohol specific courses whilst on remand. He has meaningfully participated in the various programs offered, as evidenced in the report of Rebecca Trevethick.

Whilst in custody Mr Comensoli has been working as a billet and in maintenance.

Plea of guilty

The matter resolved in the week leading up to Mr Comensoli's trial. The matter proceeded by way of straight hand-up brief at committal, and no witnesses were cross-examined. In accordance with the defence response, the only charge in dispute had been the aggravated burglary and he would otherwise have entered pleas of guilty to the balance of the charges in the presence of the jury should the matter have proceeded to trial. This represents an early plea on all charges, save for the aggravated burglary. It is evidence of remorse. It also has a utilitarian value and facilitates the course of justice. It should attract a significant discount on sentence in this case, particularly in circumstances where no witnesses have been subjected to cross-examination.

Protective factors in the community

Mr Comensoli has significant protective factors in the community that were absent at the time of the offending. These include his recent abstinence from drug use, his reconciliation with his grandmother who he will ultimately reside with upon his release, as well as his desire to start a family with his partner, who remains a very positive influence in his life.

Deterrence, denunciation and *Boulton*

The authorities are clear that community corrections orders are an inherently punitive disposition. Having already spent 476 days in custody, it will be submitted that a CCO can address the principles of deterrence of denunciation¹.

¹ Grech per Ferguson JA at [81] citing Boulton at [52]

Conclusion

In reliance upon the matters outlined above, it is submitted that a combination sentence of imprisonment together with a community corrections order would achieve the sentencing objectives in this case.

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