

*R v Moseley and Tippett* [2011] NTSC 62

PARTIES: THE QUEEN  
v  
MOSELEY, Neil Adam  
AND  
TIPPETT, Maxamilian Courtland

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION

FILE NO: 21107867 & 21108268

DELIVERED: 18 AUGUST 2011

HEARING DATES: 8-12, 16 & 18 AUGUST 2011

JUDGMENT OF: MARTIN J

**REPRESENTATION:**

*Counsel:*

Crown:	S Bain
Mr Moseley:	J Adams
Mr Tippett:	R Wild QC

*Solicitors:*

Crown:	Office of the Director of Public Prosecutions
Mr Moseley:	Northern Territory Legal Aid Commission
Mr Tippett:	Maleys Barristers and Solicitors

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*R v Moseley and Tippett* [2011] NTSC 62  
No 21107867 & 21108268

BETWEEN:

**THE QUEEN**

**AND**

**NEIL ADAM MOSELEY**

AND:

**MAXAMILIAN COURTLAND  
TIPPETT**

CORAM: MARTIN J

REASONS FOR SENTENCE

(Delivered 18 August 2011)

**Introduction**

- [1] Mr Moseley and Mr Tippett, each of you have been convicted by a jury of the crime of robbery committed on 2 March 2011 in the circumstances of aggravation that together you were armed with an offensive weapon, namely a knife, and that you were in company with each other. In other words, you have been convicted of armed robbery committed in company with each other. The maximum penalty for the crime of robbery without the circumstances of aggravation is 14 years. However, when the crime is

aggravated by the fact that the offender is armed with an offensive weapon or is in company with one or more other persons, the maximum increases to life imprisonment. So the crime you committed carries with it a maximum penalty of imprisonment for life.

## Facts

- [2] As at 2 March 2011, both of you were residing in Wanguri at the home of a witness, Mr Holden. On Saturday 26 February 2011 you, Mr Moseley, hired a 2010 model red Commodore. Some time during the evening of Wednesday 2 March 2011, together you left the home of Mr Holden in the Commodore and, late in the evening, you made your way in the Commodore to the car park of the Kentucky Fried Chicken premises on Bagot Road at Coconut Grove. Those premises shut for customers at ten o'clock, but the staff remained behind to clean up.
- [3] At about 10.30pm a young member of the staff who is now aged 20 went outside the premises through the back door to change a rubbish bin. At that time the pair of you were parked in the car park of the premises and, together, you approached the staff member and told him to get inside. Both of you were dressed in black and your faces were covered with some form of cloth. Both of you were wearing gloves.
- [4] One of you was armed with a kitchen knife. It had a serrated edge which one of the witnesses thought looked like a bread knife serration. I am satisfied it was a kitchen knife with a serrated edge, but the detail of the

serration does not matter. It was a large knife in the vicinity of 30 centimetres in length.

- [5] When you told the young staff member to get inside, one of you pointed the knife at the staff member and touched his shirt in the area of his right lower ribs. Once inside, you told the staff member to sit down.
- [6] Another young staff member who is aged only 17 years, and who was an impressive witness, saw the first staff member with his hands up and heard someone say “Stay on the ground”. He was working inside the fridge and initially thought it was a prank, but when he went outside the fridge he saw the knife at the first staff member’s ribs and heard the second man say “There’s another one at the fridge”. When that was said the knife was pointed at the second staff member, this time at the neck of the staff member. The point of the knife touched his neck.
- [7] A third staff member jumped a counter and fled. One of you chased him, but fell over and that staff member got away.
- [8] The duty manager was on the phone. Whoever was holding the knife went to him, pointed the knife at the left side of his stomach and told him to freeze. The manager put his hands up. The knife was eight to ten centimetres away from the manager’s stomach. Whoever was holding the knife then said “Open the safe, give me the money float or else I’ll stab you in the stomach”, or words to that effect. Whatever precise words were used, they included the threat of stabbing the manager.

[9] The manager handed over two tins containing a total of \$2,900 in notes and coins. At least some of the coins were wrapped in brown Armaguard paper, torn pieces of which were found the following day in Mr Moseley's trousers.

[10] Once you had the money, you ran out the back door and got into the Commodore. You drove quickly out of the car park and headed onto Trower Road. Unfortunately for you, but fortunately for the community and the interests of justice, road works were occurring at the next intersection and you were forced to screech to a halt when the traffic controller showed a stop sign. You sat there with the car revving and, when permitted to proceed, you drove to the roundabout at the intersection of Nightcliff Road and Progress Drive. Although the traffic controller did not see the direction in which you drove from the roundabout, I am satisfied that you drove a short distance to a point in the near vicinity of the home of Mr Tippett's mother in Rapid Creek where you abandoned the Commodore. I am satisfied that you knew that the Commodore had been seen by the staff of the shop and you were worried that police might be out looking for a red Commodore. You chose a spot close to the home of Mr Tippett's mother so that you had somewhere to hide if the police came along.

[11] Within about ten minutes of committing the robbery you, Mr Moseley, rang Mr Holden because you wanted him to come and pick you up. I am satisfied that you were afraid to be seen out and about together. You made a number of calls to Mr Holden in the next few minutes without getting through, but finally you got through shortly after 11pm and asked Mr Holden to come

and pick you up. He picked you up at a locality very close to the home of Mr Tippett's mother.

[12] When you were picked up, to use the words of Mr Holden, you were "hyped up" and "squabbling". I am satisfied that Mr Holden told the truth when he said you were hyped up and squabbling and, further, that he told the truth about what you said when you got back to his home. When Mr Holden asked if you had been at the Beachfront Hotel you, Mr Moseley, said that you had not been at the Beachfront Hotel and you said words to the effect "We just fucked up big time". You, Mr Tippett, were saying things to Mr Moseley like "I was all calm, but you were freaked out". I am satisfied that you were both hyped up and arguing because of what had occurred in the robbery and that you were both talking about the robbery.

[13] Later that night you, Mr Moseley, borrowed Mr Holden's vehicle to pick up your girlfriend. The precise time does not matter. It was after you had committed the robbery, been picked up by Mr Holden and returned to his home.

[14] Mr Holden gave conflicting versions about that night. The jury rejected his version that you were home all night and accepted the other version that the pair of you went out in the Commodore and later he picked you up. The jury also rejected your evidence, Mr Moseley, that the only time you went out that night was when you borrowed Mr Holden's vehicle to pick up your girlfriend. The rejection by the jury of Mr Holden's evidence that you were

home all night and of Mr Moseley's evidence to the same effect is not in the least surprising. Nor is it in the least surprising that the jury rejected your evidence, Mr Moseley, that you lent the car that night to a Mr Williams.

- [15] The next morning Mr Holden took the pair of you in his vehicle to pick up the Commodore. You, Mr Moseley, then put a substantial amount of your clothing in the Commodore and headed for Katherine. When you were stopped by police a short distance north of Katherine, you were in possession of a little over \$1,300 in cash. I am satisfied that this money was part of your share of the proceeds of the robbery which you had split with Mr Tippett. The money in your possession included coins and, as I mentioned earlier, there were scrap pieces of Armaguard coin wrapping paper found in your pocket.

### **Seriousness**

- [16] Every crime of robbery is a serious crime. As with all crimes, however, there is a scale of seriousness. Your crime is in the more serious category of crimes of this type. The shop was a vulnerable target staffed by young and vulnerable persons. It was late at night. You acted together.
- [17] The crime was premeditated and planned to some extent. Obviously it was not a well planned and professional crime because you used a vehicle that was likely to be noticed and you ran the risk, which came to fruition, of the registration number being noted and traced back to you, Mr Moseley. Nevertheless, there was a degree of planning and premeditation which

included waiting until the shop had closed to customers and getting in through the back door while the cleaning was being undertaken.

[18] A weapon was used. It was a large knife, not a small pocket knife. Not only were you in possession of the knife, you actively used it to threaten three members of the staff. You not only pointed the knife at staff, but you touched the shirt of one member in the area of the ribs and touched the neck of another staff member. While no physical harm was caused, your actions were, potentially, extremely dangerous. The potential for serious harm or even death is obvious. These actions were distressing and traumatic for the members of the staff and they are to be praised for their actions in keeping calm and responding to your demands. The trauma experienced by at least two members of the staff is reflected in their victim impact statements and it is apparent that there are ongoing emotional effects. The manager said in evidence that he was shivering when the knife was pointed at him and while he was responding to demands.

[19] In speaking of the use of the knife and the threats, I have used the word “you”. Only one of you had the knife, used it and made threats, but each of you is equally responsible because the jury accepted that you acted with a common purpose and with the intention that a knife would be used.

[20] It is not difficult to imagine more serious crimes with these circumstances of aggravation, such as armed robbery accompanied by the infliction of physical harm or the firing of shots. A significant quantity of money was

stolen, namely, \$2,900, but it was not in the realm of some armed robberies which involve very large quantities of money. This was not a highly professional and organised crime that involved detailed planning and execution. So there are more serious crimes which would fall within the worst category of crimes of this type but, nevertheless, for the reasons I have given your offending is in the more serious category of crimes of this type.

### **Moseley – Personal Circumstances**

[21] As to matters personal to you, Mr Moseley, you are now aged 35 and you have an appalling record of prior offending which includes serious crimes across a number of states and in the Northern Territory. On 27 August 2009 a Judge of this Court sentenced you for the crime of robbery and I will come back to the details of that crime in a moment. The Judge accurately summarised your background and personal circumstances and counsel said you did not wish to put any more material to me. I therefore quote the remarks of the Judge about your personal history:

“Regarding your background and your personal circumstances. I am told by your counsel that you were born and raised in Darwin. Your parents separated when you were around 8 years old and you lived with your father. Your counsel has informed me that your father was a Senior Police Officer who was violent, an alcoholic and a workaholic. Well, whilst I have not heard from your father, those allegations have not been challenged by the Crown and, for present purposes, I am obliged to accept them. Your counsel informed me that you had a stormy relationship with your father. At 14 years of age you were kicked out of your father's home and that was when you began to get into trouble and committed a number of juvenile offences.

Over the next several years you spent some time living in shared accommodation and some time living with your mother in South Australia and then in Queensland. You travelled around Australia looking for work, but seem to have worked only sporadically and for short periods of time in any one job. You have spent an extensive period of time in prison and although your actual work history is quite limited, you made use of your time in prison to complete a Certificate I TAFE in Commercial Cookery and to partly complete a Certificate II TAFE in Commercial Cookery.

You began using a variety of illegal drugs including cannabis, LSD, amphetamines, heroin and cocaine. I am told you tried heroin only 2 or 3 times while in custody in Queensland and did not take to it, but that you got into a spiral of quite serious drug abuse involving amphetamines and cocaine and that you continue to have a problem with drug abuse. I am told you have never had an alcohol problem.

You have a history of psychiatric disorders. In 1989 you were diagnosed by a Darwin psychologist as suffering from schizophrenia. In 1995 you were diagnosed with bi-polar disorder for which you receive treatment. However, I am told that despite treatment you continued to suffer from depression and mood swings.

In 1996 you were diagnosed with schizophrenia and bi-polar disorder. I am told you had suicidal ideation and behaviour, including swallowing razor blades, although you did not intend to follow through and, I am told by your counsel, that in retrospect you see this as simply a very dangerous attention seeking device.

In 2002 you were admitted to hospital with drug and/or stress-induced psychosis while in custody in Western Australia. In 2005 I am told you were diagnosed with hyperthyroidism for which you had surgery, following which you received medication for the condition. I am told by your counsel that the hyperthyroidism may well have had an effect on your mental condition.

I have been provided with a psychiatric report by Dr Walton dated 17 August 2009. In that report Dr Walton notes that you maintain some contact with your mother, but that you have no contact with your father or siblings and that you have a pattern of not sustaining long-term intimate relationships.

Dr Walton states that you are of normal intelligence with no significant cognitive deficit. He says he believes you have been properly diagnosed with bi-polar effective disorder and that your drug abuse has aggravated your underlying mental condition.

It has not been suggested to me that your schizophrenia or bi-polar disorder are causally related to your offending and, indeed, Dr Walton states otherwise. However, there is sufficient in the report of Dr Walton for me to determine that you do have an underlying mental health problem that calls for ongoing mental health attention.”

[22] Your record of prior offending appears to have begun with an offence of larceny committed on 4 December 1991 in South Australia when you were aged only 15 years. Since that time you have repeatedly committed offences of dishonesty and repeatedly breached court orders. Of great concern is the number of offences of dishonesty such as stealing and robbery which involve violence and the commission of such offences while armed with an offensive weapon. As I said to your counsel, you have a propensity to commit crimes of armed robbery.

[23] In February 1994 in Queensland you committed the crime of stealing with actual violence whilst armed with a dangerous weapon. In July 1997 you committed the crime of robbery with actual violence whilst armed with an offensive weapon and in company and you committed two further such offences in November 2001. However, you were not dealt with for those crimes until 2005, at which time you were also dealt with for two offences of robbery with actual violence committed on 31 March 2002. It appears

that a total of five years imprisonment was imposed for those crimes and a number of other less serious crimes.

- [24] In July 2002 you were sentenced in Western Australia to five years imprisonment for the crime of robbery whilst armed. I do not know the date on which that offence was committed.
- [25] Your offending then moved to Darwin. On 22 September 2006 you committed the crime of robbery at about 1am in the morning. You went to McDonald's restaurant in Ludmilla where you remained in the car park and lay in wait. At about 1.30am the manager left the restaurant and walked towards his vehicle. You approached and said "I have a gun and will use it if I have to. Take me inside, act nice and cool and take me to the office". Your hand was inside the pocket of your long sleeved shirt giving the impression that you had a firearm. Inside the premises you demanded that the victim open the safe, but in his fear he was unable to recall the combination. You then forced the victim to unlock a cupboard and remove several cash register drawers, each of which contained the cash float ready for the next shift. Then you forced the victim to remove the cash and place it into a bag, after which you forced him to unlock the cool room from which more cash drawers were removed and the cash was placed into a bag. You grabbed the bag containing \$2,500 in cash saying "I'm going to lock you in the fridge", after which you ordered the victim into the cool room and told him to wait for ten minutes before coming out. You then escaped.

- [26] Later that day, using some of the cash you had stolen, you booked an airfare and left Darwin for Adelaide that evening. On Monday 6 November, 2006 you surrendered yourself to police officers in Tasmania.
- [27] Between leaving Darwin and surrendering in Tasmania, you committed two crimes of robbery in Victoria. I will come to those in a moment.
- [28] It was not until May 2009 that you were released from prison in Victoria and extradited to the Northern Territory. I will come back to the sentence for the September 2006 offending in a moment.
- [29] After leaving South Australia, and before surrendering in November 2006, on 27 October 2006 you committed two crimes of robbery in Victoria for which you received a total sentence of three and a half years imprisonment. At the same time you were dealt with for the crime of false imprisonment. The total sentence appears to have been four years with a non-parole period of two years and six months.
- [30] Returning to the September 2006 offence of robbery, following your extradition from Victoria, on 25 August 2009 you pleaded guilty to the offence. On 27 August 2009 a Judge of this Court sentenced you to a sentence of two years and six months imprisonment and fixed a non-parole period of 18 months. At first blush, the sentence appears to be very low, but there were special circumstances which resulted in that sentence. You handed yourself in to police in Tasmania and cooperated fully with the investigation. When it came to sentence, you had been serving a sentence in

Victoria and the Judge was obliged to look at the totality of the period that you would be in custody when the sentence in Victoria was added to the sentence imposed in the Territory. Her Honour had before her evidence that you had made some efforts of rehabilitation while in prison in Victoria and assessed that you had some prospects of rehabilitation. So a number of factors came together to result in a lower sentence than ordinarily would have been imposed.

- [31] On 1 December 2010 you were released on parole. In breach of your parole, three months later you committed the crime with which I am concerned. So much, Mr Moseley, for your efforts at rehabilitation and your prospects for the future. You are a persistent and violent recidivist. Not only have sentences of imprisonment in the past not deterred you from committing crimes again, you have persistently re-entered the community from prison and committed more crimes of robbery, including crimes of robbery whilst armed. I emphasise that you are not to be sentenced again for those previous crimes. You have already been punished for those crimes. But protection of the public is the primary role of a sentencing Court and personal deterrence, that is deterring you from offending again, is a particularly important factor in sentencing you on this occasion.

- [32] As to your prospects for the future, I am unable to discern any signs whatsoever of any prospect for rehabilitation. The only factor to which your counsel was able to point was your age and the hope that the realisation might come to you that if you continue on this path you will spend most of

your adult life in gaol. It is true that experience has shown that sometimes when persistent offenders reach their forties, a degree of maturity and understanding is gained which enables those persons to achieve some form of rehabilitation. However, at the present time, bearing in mind that you have not accepted responsibility for committing this crime and you continue to deny your involvement, I am unable to discern any prospects of rehabilitation.

### **Tippett – Personal Circumstances**

- [33] Mr Tippett, turning to your personal circumstances, you are now 24 years of age. Until you were aged 21, you had never been in trouble with the criminal law. However, in May and November 2008 you committed the offences of unlawfully causing serious harm and aggravated assault for which you were sentenced by a Judge of this Court on 31 July 2009. You pleaded guilty to those offences and a total sentence of one year and ten months was imposed and suspended after service of eight months on conditions involving supervision.
- [34] Your counsel did not place any material before me other than the material contained in the court files in connection with your sentencing and later proceedings in relation to breaches of your suspended sentence to which I will come in a moment. When sentencing you in July 2009, the Judge dealt with your personal circumstances and a report of a psychiatrist, and it is

convenient that I incorporate the relevant remarks in my sentencing of you today.

“You are now 22 years of age. Much of your background emerges from the psychiatric report to which I have earlier referred.

Both of your parents are respected and busy professionals, although it is said that they have a marriage marked by recurring periods of separation. I infer, from what has been put to me, that the relationship has been somewhat stormy at times involving both drinking to excess and some violence and this has infused a degree of instability in your life.

Your mother is of the Aboriginal culture, although your father is not. You have embraced your Aboriginal cultural heritage and have a strong bond with family members in the Lajamanu community. You have very substantial continuing support from those family members, many of whom have been present in Court to evidence that situation.

You have a younger brother and sister towards whom you have displayed a parent-like responsibility at times. You have no present personal romantic attachment.

You attended school in Darwin to Year 10 level and then undertook Years 11 and 12 at the Geelong College in Victoria. You were not entirely happy there and felt isolated with the result that you eventually returned to Darwin and completed the final year of your schooling at Casuarina Senior College.

It seems clear that at times you have been uncertain as to your desired future direction. For the past two years you have worked intermittently with your father as a legal clerk. You have also had some work as an electoral officer whilst undertaking tertiary studies to lead to a degree in humanities. I am told you have been seeking a cadetship in the Australian Public Service.

The material before me indicates that you are an intelligent young person who has achieved substantial academic success despite the instability in your domestic situation. You have also achieved considerable success in sporting endeavours and have been diligent and caring in your immediate and extended family environments.

However Dr Walton, consultant psychiatrist, assesses that at this stage you lack psychological maturity.

The case history taken by him indicates that you have had a serious ongoing alcohol problem which derives from you commencing to drink alcohol at the young age of about 13. You also have a history of using cannabis, ecstasy and amphetamines extending back over some time.

The psychiatrist makes the point that you urgently need to undergo appropriate counselling and rehabilitation programs in relation to those aspects. He considers that you have reached the point of clear physical addiction to alcohol that gives rise to what he describes as 'withdrawal symptoms' when you attempt to reduce your intake of that substance. He is also of the opinion that you have a psychological dependence on the other drugs as well.

It is important to note that Dr Walton concludes his report by making these specific points:

1. The first is his comment that the probability is that you were diagnosably depressed at the material times but were and are not suffering from a major psychiatric illness. He stated that he was certainly not suggesting that the depression provides a comprehensive explanation of your misconduct, although it may have contributed to the erosion of social responsibility. Certainly treatment and rehabilitative issues have, he says, a high priority at the present. He states that perhaps most concretely should you not manage to ameliorate your pattern of substance abuse, then serious physical and mental harm can be predicted with reliability.
2. The second point is his further assessment that your prognosis, both in relation to your mental health and the risk of offending, is mixed. The doctor expresses the view that you are intellectually endowed with the wherewithal to pursue a successful career and an otherwise responsible life. He makes the point that you certainly have had a good deal of emotional turmoil and underlying psychological conflicts to resolve, but that those are potentially reversible problems.

Your counsel, Mr Wild QC, has placed before me a very substantial number of written character references all of which speak of you in positive if not glowing terms. These come from a wide variety of

sources and include a lengthy and insightful letter written by your father.

It is fair to say that amongst other things these speak of you as a likeable, caring and sensitive person and necessarily imply that your recent offending has been out of character.

Reference is made to your strong sense of family, loyalty and respect towards your friends as well as your prowess, sportsmanship and general contributions in the sporting environment and the manner in which in the past you have exhibited a friendly disposition and have easily related to other persons. It is said that you have generally been highly regarded by others.

The reference is emphasised what is accepted as the great shame, sorrow and remorse said to be felt by you concerning the manner in which you have let down your immediate and wider family as well as your friends. It is put to me that you have now come to appreciate the personal and social cost of the non-acceptance of your conduct by your friends and your social acquaintances. Comment was made that you became quite withdrawn and saddened by the fact that you were, in effect, shunned socially as a result of what you did. Those features are also reflected in your recent written statement that was referred to by Mr Wild.

It is said that you have achieved an insight into the enormity of your behaviour and are genuinely ashamed and remorseful in relation to it. Indeed, it was put to me that until you viewed the CCTV coverage of your attack on Simon Bartlett, you had no real present appreciation of the savagery or extent of your conduct at the time.

I accept that, provided that you undergo the types of rehabilitative treatment identified by Dr Walton, there is a good prospect that you will not re-offend. Having said that, I do however have some concerns with the content of the section 103 report prepared by a senior probation officer.

In the course of it she comments upon your expressed reluctance to participate in counselling indicating that you would not attend voluntarily saying 'I prefer to counsel myself'. This does not suggest to me that you have a present true appreciation of the needs that have been identified by Dr Walton. It further raises some question as to your genuine commitment to rehabilitation measures although I take

the point made by Mr Wild concerning anger management counselling that you have had at Amity House. However your identified needs, of course, as reflected by Dr Walton, extend far beyond that.

I note that you come before the Court as a still young first offender at the age of 22 and that you have entered timely pleas to the charges against you for which you will receive full credit."

[35] Mr Tippett, you reached the age of 21 years without getting into trouble with the criminal law. Despite what the Judge described as "instability in your domestic situation", you achieved considerable success academically and in sporting pursuits. You were regarded as a caring person of good character. In a period of upheaval in your life, alcohol and the use of other drugs, together with depression from time to time, resulted in you acting out of character in committing the offences of violence to which I have referred. You were ashamed of your conduct and the Judge was confident that you had good prospects of rehabilitation.

[36] The suspension of part of the sentence resulted in you serving eight months imprisonment commencing 22 July 2009. You were released in March 2010. Unfortunately, you met Mr Moseley in gaol. He befriended you and looked after you and, when Mr Moseley was released on parole in December 2010, your friendship was renewed.

[37] The conditions of suspension of your sentence included supervision and a prohibition against purchasing or consuming alcohol or other drugs. You found it difficult to comply. In September 2010 you attended a funeral and

consumed a substantial quantity of alcohol in breach of your conditions of suspension. You appeared in this Court on 1 October 2010 and admitted the breach. The operational period of suspension was extended by six months.

[38] You continued to struggle with compliance. You consumed alcohol and harboured an attitude that you were able to get on with your life without supervision. As a consequence of that attitude you failed to comply with directions, including directions to undertake urinalysis. You also travelled to Alice Springs to play cricket without permission from your probation officer.

[39] On the day of the robbery with which I am concerned, Wednesday 2 March 2011, you spoke with your probation officer and told her that you had been evicted from the family home. Further, you said that you had lost your employment and had returned to substance misuse and consuming alcohol. It was in these circumstances that during contact with Mr Moseley he offered you accommodation at the home where he was living. This was the home of Mr Holden and you moved in only a few days before committing the robbery. You had known Mr Holden for some years and regarded him as a friend.

[40] You were arrested for the robbery on 8 March 2011. In April you appeared before a Judge in connection with the breaches of your suspended sentence. Your probation officer explained to the Judge that when she interviewed you on 2 March it was clear that you were having personal difficulties and you

were seeking her help. It is a great pity for you and the community that on the very same day you committed this robbery.

[41] The breach proceedings were adjourned while the probation officer formulated a rehabilitation strategy. It was felt that you had come to a realisation that you could not succeed without help and, notwithstanding your offences of violence, you were assessed as a suitable candidate for the Banyan House Residential Rehabilitation Program. Those assessing you were satisfied that you were no longer at risk of being violent.

[42] It was in these circumstances that on 1 June 2011 the Judge restored only 77 days of the sentence on condition that you immediately enter into the Banyan House Residential Program. However, you could not be released into that program because you were in custody awaiting trial for the robbery.

[43] There is now a balance of a little over 11 months still to be served with respect to the sentences imposed in July 2009.

### **Tippett – Acknowledgment of Guilt**

[44] During submissions as to sentence, counsel put to me that you were deeply ashamed of your past conduct and the trauma and distress that your conduct has brought to your family and friends. I was told that you accept the verdict and that all you want to do is serve your time and get on with living a useful and law abiding life after your release. Counsel urged that I should find that there are good prospects of a successful rehabilitation.

[45] I pointed out to counsel that although you might well have been ashamed of your offences of violence, in view of your plea of not guilty to the robbery and your failure to acknowledge responsibility, I was not in a position to accept that you were sorry for committing the robbery or ashamed of it. I observed that your failure to acknowledge responsibility made it very difficult to reach a positive conclusion that there are good prospects of your successful rehabilitation. I pointed out that I did not know when you met Mr Moseley and that although I might suspect that you had come under the influence of an older hardened criminal, in the absence of any information about these matters I could not make a positive finding in your favour. I adjourned the proceedings to enable counsel to obtain instructions from both you and Mr Moseley.

[46] Upon resumption of the hearing a short time later, on your behalf counsel informed me that you accept that the verdict of the jury was correct. Further, and importantly, he said that you now admit responsibility for committing the crime. In other words, you now admit your guilt. Counsel informed me that you met Mr Moseley in gaol and he befriended you.

[47] I have not been given any information about the circumstances in which the robbery came to be committed. The submissions did not extend to identifying your co-offender. All that was said was that, to some extent, you were acting under the influence of Mr Moseley.

[48] In response, Mr Adams on behalf of Mr Moseley said that while Mr Moseley maintains that he did not commit the robbery, he does not oppose a finding in your favour that it is likely that you were acting under his influence.

[49] Mr Tippett, although your cooperation does not extend to identifying your co-offender, it is the verdict of the jury that your co-offender was Mr Moseley and, independently of the verdict, I am satisfied that Mr Moseley was your co-offender. In the case against Mr Moseley, I cannot make a finding that he was in charge. From the jury verdict, and my own view of the evidence, it is apparent that the pair of you were acting together pursuant to a common plan. Each of you is responsible for what the other did. When it comes to the actions of each of you in carrying out the robbery, there is no basis to distinguish between you. However, there are other reasons to distinguish between you.

[50] You are a young man who, with no prior criminal record, committed two offences of violence in 2008 at the age of 21 and went to gaol. This was your first experience of gaol and no doubt you found it daunting. Against this background, and bearing in mind the turmoil and upheaval in your life, coupled with your psychological difficulties, I am satisfied that you were vulnerable to the influences of an older hardened criminal, namely, Mr Moseley. No doubt you found being befriended by an experienced inmate very comforting. It is against this background, and bearing in mind that when you saw the probation officer on 2 March 2011 you were struggling to cope with life and being unable to return home, that I am

satisfied that at least to some extent, you were acting under the influence of Mr Moseley. I make this finding in your favour in your case, but I am unable to make a finding in this regard against Mr Moseley.

[51] Importantly, you now acknowledge your guilt and accept responsibility for your criminal conduct. This is an extremely important first step towards rehabilitation. I accept that you are sorry for what you did and ashamed of your conduct. It cannot have been easy after a trial in which you pleaded not guilty to acknowledge that the jury got it right and to admit your guilt. Notwithstanding that it is a late admission of guilt, it is to your credit that you were able to make the admission and accept full responsibility.

[52] In these circumstances, and bearing in mind all the material that has been put before me about your life, I am satisfied that you accept that you must be punished for your crime and you have a strong desire to get on with your life once you are released. You have insight into your problems and you are determined to achieve rehabilitation and become a good member of the community. You are at a very critical stage in your life and I perceive that there are good prospects that you will take the right direction after you are released. It must be said, however, that there is a long way to go and you will need all your resolve while you are in gaol to resist the influences of more hardened criminals.

## **Robbery – General Deterrence**

[53] Returning to the crime of robbery, particularly when a weapon is used and offenders act together, it is obvious that every such crime is a serious crime and I have already explained why the crime you committed together is in the more serious category. Regrettably, crimes like this are not uncommon and all victims, particularly those who work in industries that are susceptible to these types of crimes of violence, are entitled to such protection as the law can give them through the imposition of penalties that will, hopefully, act as a deterrent to others who are minded to commit these types of crimes.

Robbery and other crimes of violence disturb the community at large. General deterrence and marking the disapproval of the community are important factors in the exercise of the sentencing discretion.

## **Sentence**

[54] I turn to sentence. Neither of you is entitled to any reduction that would be given for a plea of guilty. You, Mr Moseley, have shown absolutely no remorse whatsoever. I accept that you, Mr Tippett, are very sorry for what you did and are ashamed. While you are not entitled to a reduction by way of a plea of guilty made before the trial, your late acknowledgement of guilt after the verdict of the jury has been very important in my assessment of your prospects of rehabilitation. Acknowledging guilt and accepting responsibility, even after a verdict, is to be encouraged and I have made a small allowance in your favour in fixing the head sentence. More significantly, because your acknowledgment of guilt and responsibility has

enabled me to make a positive assessment of your prospects of rehabilitation, it has resulted in the exercise of a degree of leniency through concurrency of your sentence with the balance of the previous sentence and a non-parole period that is lower than the non-parole period that I would have fixed if you had not admitted guilt and accepted responsibility.

### **Sentence – Moseley**

[55] Mr Moseley, in arriving at your sentence I have taken into account that between your arrest and the revocation of parole, you spent 15 days in custody on this matter. I have also taken into account that the balance of your previous sentence is to be served at the expiration of the sentence I am about to impose for the crime of robbery. At the time of your release on parole that balance was ten months and twenty days, but as parole was revoked on 18 March 2011 you have now served five months of that period.

[56] As to the fixing of a non-parole period, I have given anxious consideration to whether, in view of your record of prior offending, I should decline to fix a non-parole period. I am directed by the *Sentencing Act* to fix a non-parole period unless I consider that the nature of the offence, your past history or the circumstances of the particular case make the fixing of a non-parole period inappropriate. In my view, I would be justified in not fixing a non-parole period, but I have decided that notwithstanding your appalling record of offending, it is in the best interests of the community to fix a non-parole period. When I look back at your period of imprisonment prior to being

sentenced in this Court in July 2009, and I take into account that you were out of prison for only three months before you committed the robbery and you were arrested and placed back in prison, by the time any question of parole arises, you will have spent a very long time in gaol. It may be that the Parole Board will refuse to grant you parole, but I have decided it is in the best interests of the community to leave that possibility open so that if the Parole Board decides to grant parole, there will be a short period during which you are under probation and supervision which might assist in your adjusting to life on the outside. For obvious reasons, however, the non-parole period will be a large percentage of the head sentence leaving only a relatively short time during which there will be an opportunity for release on parole should the Parole Board see fit to do so.

[57] You are convicted.

[58] I impose a sentence of nine years imprisonment commencing 3 August 2011. The balance of your previous sentence is approximately five and a half months which will be served in addition to the period of nine years. I fix a non-parole period of eight years and three months.

### **Sentence – Tippett**

[59] Mr Tippett, you are convicted.

[60] I impose a sentence of seven years imprisonment commencing 1 June 2011. I restore the balance of the sentence imposed on 31 July 2009 which was held in suspense. Section 43(6) of the *Sentencing Act* states that the

restored sentence will be served concurrently with the sentence I have imposed for the crime of robbery and I do not order otherwise. To avoid any doubt, I direct that the restored sentence be served concurrently with the sentence imposed for the robbery.

- [61] The minimum non-parole period I can fix is three and a half years, being fifty percent of the head sentence. This is where your youth, acknowledgement of guilt and prospects of rehabilitation become particularly important. I fix a non-parole period of three years and six months.
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