THE CHILDREN'S COURT OF

WESTERN AUSTRALIA

THE STATE OF WESTERN AUSTRALIA
and
D W

QUAIL P

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THURSDAY, 21 JULY 2022, AT 2.28 PM

MS C. DE ZILWA represented the State of Western Australia.

MS N. ANDERSON appeared for Youth Justice Services.

MS L. SALSANO appeared for the accused.

ASSOCIATE: Calling the State of Western Australia v D W. D W, is that your name?

W, MR: Yes.

ASSOCIATE: Thank you.

HIS HONOUR: All right, D. It's good to see you in person rather than on the video.

W, MR: Yes.

HIS HONOUR: Remember I'm Judge Quail? I spoke to you from Karratha last week when I was on the video.

W, MR: Yes.

HIS HONOUR: All right. So, D, that's Ms Salsano, your lawyer on the line there.

W, MR: Yes.

HIS HONOUR: Okay. Ms Salsano, any family for D?

SALSANO, MS: Yes. May it please the court, I appear for D. I've spoken to Nan – Ms W today. Unfortunately, she's having some phone issues and she preferred that I update her on proceedings after, rather - - -

HIS HONOUR: Is she - - -

SALSANO, MS: - - - than her be, yes - - -

HIS HONOUR: All right. Is she still - - -

SALSANO, MS: - - - on the line.

HIS HONOUR: - - - in Karratha with a sick - - -

SALSANO, MS: Yes.

HIS HONOUR: - - - granddaughter, D's - - -

SALSANO, MS: She - - -

HIS HONOUR: - - - sister?

SALSANO, MS: Yes. She's still in Karratha.

HIS HONOUR: All right. Ms De Zilwa, you're – I will relieve her of appearance, then. Ms De Zilwa, you're with Ms Cullen.

SALSANO, MS: Thank you, your Honour.

DE ZILWA, MS: Yes, if it pleases the court.

HIS HONOUR: Ms Anderson, you're for Youth Justice?

ANDERSON, MS: Yes, your Honour.

HIS HONOUR: All right. D, this is going to take quite a long time today. All right. If you get bored, just let me know and I will let you go and sit downstairs while I talk to the lawyers, and then I will bring you back when I'm ready to give a decision. All right.

W, MR: Yes.

HIS HONOUR: But just see how you go. Okay. Right. So, counsel, since I programmed the matter last week, let me identify what I've had regard to now and read. Right. Obviously, the transcript of the learned magistrate's sentencing on 10 June. Ms De Zilwa, although I didn't order it, I've received helpful written submissions from you, albeit this morning, but thank you very much. That's - - -

DE ZILWA, MS: I apologise for the lateness, your Honour.

HIS HONOUR: - - - of assistance. There's a State brief, which seems to be mainly statements of material facts. You're going to have read all of the statements of facts, Ms De Zilwa.

DE ZILWA, MS: Yes, your Honour.

HIS HONOUR: So I haven't – well, I've read them but I haven't looked at any of the other materials than the statements of facts. Now, I've had a look at D's record. And the record doesn't in fact – which is something we've tried to correct on the records. It doesn't have the exact details of the sentences for the conditional release order that D was placed on in January 2022, and so I've had to go back to see the actual order itself and look at the sentences that the magistrate imposed on that record.

But, as I say, we're trying to get the records properly fixed up in that regard. Now, in addition to those materials, I identified some last time but, for the sake of completeness, I will identify everything now that I've looked at. So there's a court report of 18 July 2022, which is the updated report I ordered; a detention management report of 18 July, which is again what I ordered. Then I've got the earlier materials.

There's a detention management report of 1 June 2022. It's, in fact, referred to in the sentencing transcript before the learned magistrate as 13 May, but it must be the one, I think, of 1 June, which would have been nine days before the sentencing. There is an earlier detention management report of 19 May as well. The 1 June really is an update of that, although there's one material difference in relation to education which I might say something about.

There's a Youth Justice update report of 18 May. There's a breach report, which is the mandatory report that had to be prepared in relation to a noncompliance breach because D was in breach of the order that he was on by noncompliance, as well as by reoffending; although the magistrate – learned magistrate really just dealt with it by way of reoffending, and understandably so perhaps in the circumstances.

There's some earlier bail reports going back to 27 April, 17 February; an earlier court report of 7 January. But of most moment really for my purposes, I've looked at the multidisciplinary assessment report which was prepared, the FASD report of 8 September 2021. Are those all the materials, counsel?

DE ZILWA, MS: Yes, your Honour.

SALSANO, MS: I believe so, your Honour.

HIS HONOUR: All right. Before we get underway then with the review, there remains, Ms Salsano, the question of the mention charges which are still before me and which no plea has been entered on them, which I indicated on the last occasion it would be in D's interests insofar as is possible to deal with everything that can be dealt with.

SALSANO, MS: Yes, your Honour. D has been visited by our office and disclosure has been reviewed with him, and he is now in a position to enter his pleas to 291 and 292 of 2022, the Joondalup charges, and also change his plea on 2093 of 2022.

HIS HONOUR: All right. I will put those two – well, those three charges, then, to D. D, there's three charges – all right – which I'm going to put to you again and take your pleas on that Ms Salsano, or one of the lawyers who works with her, has spoken to you about at Banksia. All right. So the first charge is a Joondalup charge. It's number 291. That says that on 8 February 2022 – all right – this year, earlier this year just before you went into custody, at Banksia Grove you were in a lady's home.

Her name was Ms … and that you were in there without her consent and you committed the offence of stealing when you were inside. And that was her home. It was a house which she lived in. All right. So that's a charge of home burglary. Do you understand that charge?

W, MR: Yes.

HIS HONOUR: How do you plead?

W, MR: Guilty.

HIS HONOUR: All right. I record - - -

DE ZILWA, MS: Sorry, your Honour.

HIS HONOUR: - - - that plea.

DE ZILWA, MS: In relation to 291, in the circumstances now that there has been a plea of guilty - - -

HIS HONOUR: Yes.

DE ZILWA, MS: - - - to the associated home burglary, the State discontinues 291 – Joondalup 291 of 2022. Section - - -

HIS HONOUR: 291 or 292?

DE ZILWA, MS: Sorry. 292 of - - -

HIS HONOUR: All right.

DE ZILWA, MS: - - - 2022.

HIS HONOUR: All right. So because you pleaded guilty to the burglary and because you admit that you stole something inside, the State aren't going to bother carrying on with the actual stealing charge which went along with it. All right. So I'm going to dismiss that charge pursuant to

section 25. So that's charge 292 finalised. And then it's 2093 is the one that the plea is to change on. Is that right?

SALSANO, MS: Yes, your Honour.

HIS HONOUR: Just let me find that in my list. It might take a little while. There's so many. Here it is. So one more charge. D, that says on 7 March 2022 – so that must have been when you were very briefly out on bail. Is that right, Ms Salsano?

SALSANO, MS: Yes, your Honour.

HIS HONOUR: Yes. So 7 March 2022 – right – at Langford you were in the place of a person, … without his consent to be inside and you intended to commit an offence inside, and it was a house. It was his home where he lived. Okay. So that's a burglary with intent. They're not saying you stole anything, just that's what you intended to do. Do you understand that charge?

W, MR: Yes.

HIS HONOUR: How do you plead?

W, MR: Guilty.

HIS HONOUR: Right. So I will vacate the trial that was listed on that charge in Perth for 16 November. Pleas of guilty on those - - -

SALSANO, MS: Thank you.

HIS HONOUR: - - - three now. Just let me make a note. All right. So that's pleas on everything. So then, really, the matter is to proceed both as a section 40 review brought by you, Ms Salsano, on behalf of D and a sentencing for the first time on the home burglary charge 291 and burglary with intent charge 2093. Now, in the circumstances - - -

SALSANO, MS: Yes, your Honour.

HIS HONOUR: - - - Ms Salsano, although those pleas have only been entered this morning, I have a wealth of reports. I don't see the need to get any additional reports. You don't seek that the matter be adjourned for me to get additional reports?

SALSANO, MS: No, your Honour.

HIS HONOUR: All right. I think the way that we will proceed – given it is of that sort of, if I can say, hybrid nature where there are two matters that I need to deal with, we will proceed, Ms De Zilwa, by you reading me the facts on all of the matters. I will then hear from Ms Salsano, both in mitigation and also in relation to her submissions on the section 40 review.

And then I will hear from the State in response on the section 40 review and what you say in relation to sentence on the new matters and re-sentencing insofar as your written submissions agree that there does need to be a re-sentencing.

DE ZILWA, MS: Yes.

HIS HONOUR: Are there any other applications, Ms Salsano?

SALSANO, MS: If the State are alleging that D is in a third-strike position or a repeat offender position, then there will be a 189(3) application. I'm not sure if the State are making that submission.

HIS HONOUR: Is that in relation to charge 291? Well, when you say - - -

SALSANO, MS: Yes, your Honour. The - - -

HIS HONOUR: - - - that the State allege that he's caught by the repeat offender legislation, that would be caught by charge 291 as a third striker. Is that what you're suggesting?

SALSANO, MS: Yes, your Honour.

HIS HONOUR: What does the State say in relation to D's strike position, Ms De Zilwa?

DE ZILWA, MS: He's a third striker on the charges that he pleaded guilty to today.

HIS HONOUR: So he's a – well, on both or one?

DE ZILWA, MS: The subsequent – the first subsequent offence would be 291, but 2093 would also be a subsequent offence.

HIS HONOUR: Really?

DE ZILWA, MS: If they're sentenced together, don't they both count as a strike?

HIS HONOUR: It's a burglary with intent.

DE ZILWA, MS: Yes.

HIS HONOUR: Anyway, you can address me on that later. There's an anterior question, really. So just hang on.

DE ZILWA, MS: Sorry.

HIS HONOUR: Sit down, Ms De Zilwa. That's fine. So, Ms Salsano, the State do suggest that D is in a third-strike position on 291 and they also say, at this stage at least, on 2093.

SALSANO, MS: Yes, your Honour. Look, I could see how the offences for which D was placed on a juvenile conditional release order would have counted as one strike. I can see how that could count as one strike. And then now he has subsequently pled to 291, a home burglary and commit, and 2093 which is a burglary with intent in dwelling. But, yes, I can see how they might allege that he's a third – in a third-strike position.

HIS HONOUR: Well, Ms Salsano, I set out very clearly and at considerable length in RW how home burglary strikes are counted for young offenders in D's position. So I've made it clear that it needs to be identified which the strikes are, if there is any dispute, before a judicial officer who is to proceed to sentencing. And - - -

SALSANO, MS: Yes.

HIS HONOUR: I would have thought that the position before it comes before me would have been clear in relation to whether it's a second or third strike. And if it's not, then where do we go?

SALSANO, MS: Yes, your Honour.

DE ZILWA, MS: Perhaps if I could - - -

HIS HONOUR: Sorry. Ms Salsano, Ms De Zilwa wants to say something on this issue.

DE ZILWA, MS: So the reason why the State says that D is in a third-strike position is that on 24 September 2021, he was sentenced to a JCRO. Now, that was re-sentenced on 19 November to an eight-month IYSO. On that date, an additional two home burglaries were sentenced. He was then before the court on 10 January 2022, which is when the JCRO

was imposed. Again on that date, there was additional home burglary charges.

HIS HONOUR: Right.

DE ZILWA, MS: And with the reasoning that your Honour has referred to that you laid out in RW, those – all of the IYSO convictions would have been released as of, in some cases, 24 September and, other cases, 19 November. But that would be the first relevant conviction, perhaps because of the way that sentencing occurred. The second would be the charges that were sentenced on the 6th – sorry – 10 January for the first time. And then the next strike is, in combination, 291 and 2093. So not separate – not separately strikes but as one strike.

HIS HONOUR: All right. So the State have then complied with the procedure I've said should occur in RW, Ms Salsano. That's why they say it is now a third strike. So what do you say?

SALSANO, MS: Yes, your Honour. That's understood, and there will be an application under section 189(3). I do understand the practice direction set by your Honour, but I would hope your Honour would consider the application today based on oral submissions.

HIS HONOUR: Ms Salsano, I wrote RW. I wrote the practice direction immediately afterwards to cater for what I expected to be practitioners making 189(3) applications and setting out a clear procedure for that to occur.

SALSANO, MS: Yes, your Honour.

HIS HONOUR: Where a written application is filed, it can be concurrently with a sentencing with an affidavit and supporting materials, because the consequences are so serious.

SALSANO, MS: Yes, your Honour.

HIS HONOUR: Now, Ms Salsano, you were alive to the likelihood of a section 189 application having to be made when you appeared before the learned magistrate on 10 January because you referred to it then. Why is it being sprung on me today verbally?

SALSANO, MS: I do apologise, your Honour. I didn't have instructions on the two – well, the three charges before the court today. I have made a number of attempts – I visited D a number of times. Our office has visited

D a number of times. We've had a number of visits cancelled. And it was my understanding – I just did not have the instructions up until Tuesday. And even then, I wanted to satisfy myself by speaking to D again this morning.

And, yes, I do apologise, your Honour, but I didn't have those instructions as to the pleas on those matters. Because even D has real difficulty really remembering those offences. He remembers – yes, your Honour. It was difficult to obtain instructions in relation to those matters.

HIS HONOUR: And when the matter was before the magistrate on 10 January, it's your position that you have not been able to get D's instructions on the plea and consequent 189 application since then until now?

SALSANO, MS: Sorry, your Honour. The 10th – 10 January or the 10th of - - -

HIS HONOUR: Sorry. 10 June. 10 June.

SALSANO, MS: Sorry, your Honour. I had instructions - - -

HIS HONOUR: If I said, "January" - - -

SALSANO, MS: - - - from D that if - - -

HIS HONOUR: - - - I meant June. When you were before the learned magistrate.

SALSANO, MS: Sorry, your Honour. Sorry, your Honour.

HIS HONOUR: I mean, that was - - -

SALSANO, MS: Yes, your Honour.

HIS HONOUR: I mean, that was originally your application. You didn't want to go to sentencing then because you wanted to sort out everything at once, and that's when you referenced the 189 application.

SALSANO, MS: I did. Yes. If the – yes. Well, your Honour, I can't make any more excuses. When I speak to D, it is very difficult to take instructions and we do one thing at a time, really. But I did have instructions from D that if he was to plead, that there would be that application, but I didn't have instructions on – settled instructions, your Honour.

HIS HONOUR: Right. Ms Salsano, well, there are two possibilities: (1) I adjourn the issue, because it obviously has to be dealt with at the same time; or (2) I hear from the State about whether they are prejudiced by the late notice of a 189 application and then consider whether, in fact, we can proceed with it today verbally in circumstances where D is in custody and would remain in custody if the matter is adjourned. Ms De Zilwa.

DE ZILWA, MS: I have provisionally prepared for the application, so there's little prejudice.

HIS HONOUR: Well done, Ms De Zilwa. In those circumstances then, I will proceed and hear a 189 application verbally. And which convictions do you say it relates to or do you simply say it should relate to all of them?

SALSANO, MS: Your Honour, I do the make application under section 189(3) in relation to all convictions.

HIS HONOUR: All of the relevant home burglary convictions. All right.

SALSANO, MS: Yes, your Honour.

HIS HONOUR: All right.

SALSANO, MS: Yes, your Honour. And for this application, I do rely on the reports before the court that are also before the court for section 40 review and sentence - - -

HIS HONOUR: Yes.

SALSANO, MS: - - - today.

HIS HONOUR: All right. Well, look - - -

SALSANO, MS: I won't seek to repeat them.

HIS HONOUR: We've established the groundwork then. I'm still going to proceed in the same - - -

SALSANO, MS: Yes.

HIS HONOUR: - - - manner. I will hear the facts. I will then hear from you in mitigation, on the section 40 review and the 189 application, and then the State can respond in relation to all matters.

SALSANO, MS: Yes, your Honour.

HIS HONOUR: Ms De Zilwa.

DE ZILWA, MS: In relation – there's matters before your Honour by way of review. There's a brief which the State formally incorporates into these facts. In relation to South Hedland charge 175 of 2020, at about 9.15 pm on Saturday, 1 August 2020, D attended the Senior High School in the company of a male co-offender who had not been charged. They have attempted to gain entry to several doors leading to the canteen using a flathead screwdriver which they had found earlier at the front of the school.

Entry was eventually gained via the canteen door, which was forced open, and the alarm was activated on entry. D and the co-offender have rummaged through several rooms in the canteen area. A carton of juice boxes was taken, and they left the area. The alarm panel was also ripped from the wall. This incident was captured on CCTV. Fingerprints were located on the canteen window where an earlier attempt had been made to gain entry.

These fingerprints later matched D's. On 5 August 2020, he was arrested and conveyed to South Hedland Police Station where he participated in a video record of interview, making full admissions. He stated he and the co-offender drank a juice box each and left the carton at a tree nearby. In relation to South Hedland charge 177 of 2020, between 7 pm on Saturday, 1 August 2020 and 4.45 am on Sunday, 2 August, D has attended …, South Hedland in company with another who has not yet been charged.

They have walked past the address earlier in the evening and noticed from the street that a bedroom window was open to the house. They have drawn the attention of police, who spoke with the pair outside the address. D and the co-offender later returned and climbed in through the open window. Once inside, they searched the premise for items to steal and left a short time later without taking anything. On 5 August 2020, D was arrested and conveyed to the South Hedland Police Station where he participated in a video record of interview and made full admissions.

In relation to South Hedland charge 190 of 2020, at around 11.03 pm on Saturday, 22 August, D attended the Primary School in Karratha. He was in company with another co-offender who is statute-barred. And I take statute-barred, your Honour, to mean that they were not yet reached the age of 10 years old so couldn't be charged. D and the co-offender entered the premises via an unlocked classroom door.

The witness, being an employee of Security, arrived as part of a standard check of the location. He observed torchlight through a classroom window and contacted police. He continued to check the premises, locating both D and the other in a classroom toilet stall. Police arrived a short time later and arrested D. He was conveyed to Karratha Police Station and did not participate in a video record of interview.

In relation to Karratha charge 21 of 2022, at around 5 pm on Monday, 18 January 2021, D and another co-offender, S O, who's born on 2 January 2009, were in the front yard of …, East Carnarvon. They both approached the rear sliding door of the main house on the premises before noticing the elderly female occupant, the victim in this matter, sitting inside the address. They both entered into the house via the unlocked rear sliding door.

D has looked around the house behind where the victim was sitting. The victim turned around and sighted the accused and co-offender inside the address. The co-offender has asked the victim if they could have a drink of water. The victim has walked into the kitchen to pour a glass of water for both D and the co-offender. The co-offender followed the victim into the kitchen, while D remained in the main living area. D has entered multiple rooms within the house.

He has located a handbag next to the seat where the victim was originally sitting. He has picked up the handbag and exited the premises with it. The co-offender has also left the address. While outside, D has looked through the handbag and located a smaller wallet. He searched through the smaller wallet and took $35 of cash from inside. They have then thrown the remaining – the rest of the handbag, wallet and other cards underneath a nearby bush in the front garden of the victim's house.

They've then ran away from the address. At 6 pm on Monday, 18 January 2021, D was arrested in company with the co-offender. They were conveyed to Carnarvon Police Station where he participated in a video record of interview. He said, "I only went inside for a drink".

In relation to Carnarvon charge 74 of 2021, the victim is a 54 year old female who resides with her 11 year old son. D was 12 at the time. At approximately 6.30 pm on 16 February 2021, D was in company with three co-offenders who followed the son – the 11 year old son and his friend home from basketball courts in East Carnarvon. As they've entered the unit – sorry. As the victim's son and his

friend entered the unit, two of the co-offenders came to the front door and tried to enter the house. However, they were confronted by the victim and refused entry.

D and a co-offender went to the rear of the unit, where D entered through an open rear sliding door. As the victim was distracted – sorry – D has rushed into the kitchen area where he located and stole the victim's handbag, containing her credit cards and some papers. As he did so, a co-offender managed to enter through the front door by ducking under the victim's arms. The co-offender stole a packet of cigarettes from the kitchen bench, and both of them ran from the unit.

They have then – sorry. This was sighted by the victim's son, who alerted the victim. The victim ran after D and the co-offender as they left, eventually locating them nearby and demanded they return the stolen handbag. D had discarded the handbag and pointed to a nearby garden area, where the victim located her bag. The bag and its contents had a total value of $100, the cigarettes 35, but were not recovered from the – they were not recovered.

In relation to Carnarvon charge 328, at about 10.05 am on 9 September 2021 – sorry – D and the co-accused, one being statute-barred and the other being N K – his date of birth is 17 December 2008 – who was uncharged at the time that these facts were written. They've attended Carnarvon Regional Hospital and they've made their way through a construction site on the western side of the hospital, climbing underneath the building to make their way into the old aged residential area.

They've gained entry into the property by an unknown means, walked down a corridor and made their way into a storage room. They've stolen a backpack from the room and began going through the bag before being disturbed by a witness and then leaving the area. The area is covered by CCTV cameras from the hospital. Later the same day, D was arrested by police after abandoning a stolen vehicle and engaging in a short foot chase.

He was conveyed to Carnarvon Police Station where he decline to participate in a video record of interview. In relation to Carnarvon charge 330 of '21, between 11 am and 1 pm, I believe, on the same date, D has attended…, Carnarvon, making his way through the rear door of the premises. Both occupants of the house were inside at the time and were unaware that D had entered their home.

D searched through the house, taking multiple items including keys for the victim's vehicle, a Ford Territory station sedan, registration …, before leaving the scene in his vehicle. The victim walked out the front of her property, where she noticed her vehicle missing before returning inside and seeing that multiple cupboards had been opened. Police were called and identified – sorry. A short time later, police located and identified the stolen vehicle before D abandoned it on a dirt track behind … Crescent, Brockman and was pursued on foot by police.

He was again taken to Carnarvon Police Station. In relation to Carnarvon charge 367, at about 11.05 pm on Sunday, 3 October 2021, D and an unidentified co-offender entered the Caravan Park in Carnarvon. They are captured on CCTV footage walking into the front driveway of the premises with D continuing further inside the property, whilst the co-offender waited at the front.

D made his way to the residential building number …, which was occupied by the victim at the time. The victim left her building for a short period, leaving the front door unlocked which D utilised to gain access to the building. Once inside, he has accessed the victim's black Kathmandu backpack which contained two wallets with $45 inside, an iPad mini, an Apple iWatch and two sets of car keys to the victim's Mitsubishi Triton, registration … .

He has taken the bag and tipped all the contents on the floor outside of the building. That property has been recovered. He has utilised the keys from the backpack to start the vehicle before driving out the front gate. Inside the back of the vehicle at the time was one fishing rod, camping chairs, camping oven, camping trolley, an esky, shoes and swimsuits to the total value of $3000. None of that property has been recovered.

D was captured on CCTV with the caravan park – within the caravan park grounds driving the vehicle. The vehicle was later recovered and had sustained $600 worth of damage to the left rear quarter panel and rear tail light.

In relation to Carnarvon charge 382 of '21, at about 6.45pm on Friday, 15 October 2021, D was outside …, East Carnarvon. He has entered the victim's address via a glass sliding door.

The victim, at this time, was seated in a chair facing away from the sliding door, watching television. She had her handbag containing her purse and $150 in cash on the

chair next to her where she was sitting. She was startled by D entering her home and asked him what he was doing inside her address. He said he wanted – sorry. He asked for a drink of water, and the victim told him to get out of her house.

D walked out of the house, and the victim went to get a glass of water from the – for D. D has stolen the victim's handbag from the chair and exited the address. He has rummaged through the handbag and took the $150 from the wallet. The victim has returned with the glass of water, and D came back into the address. It was at this time that the victim sighted her handbag laying on the ground near her sliding door. The victim attempted to grab – sorry – D, but he fled her home.

Police were contacted and attended a short time later, and the victim identified D to the police. He was subsequently arrested and did not participate in a video record of interview. The victim in this matter is 89 years old. She's female and lives alone.

In relation to Carnarvon charge 473 of '21, at about 11 am on Monday, 29 November 2021, D and the co-accused, N K, E J, whose birth date is 11 June 2008, and N J, they attended – sorry. N J' birth date is 21 October 2009. They've attended …, Morgantown, which is the residential address of the victim. They have smashed the front bedroom window and climbed into the property without the consent of the victim. Once inside, they have gone through the property, entering every room and going through all the drawers, cupboards and wardrobes. They have stolen a silver folding knife and a red box cutter from the victim's bedroom.

They've also stolen a punnet of strawberries, a punnet of blueberries and a black-handled serrated knife from the kitchen before leaving out the rear yard and breaking into the neighbour's property at …. They have continued into a complex at … where they were located and identified by attending police during a further burglary before they ran away into bushland. The black-handled serrated knife was located in the property of ….

On 2 December, D was arrested at an address in Brockman and conveyed to the Carnarvon Police Station where he participated in a video record of interview. He made admissions to being involved in the incident. His explanation was, "I don't know why I did it". On the same date and place in relation to 475 but this time the address

is …, they have forced the back bedroom window open and climbed into the premises.

They've conducted a search of the bedroom, opening the top drawer of a bedside table and took $15 worth of coins, along with a set of housekeys. Again they've then gone to …. So in relation to 477, on the same date and place after leaving …, they gain access to the secure rear year of …, jumping a perimeter fence before smashing a laundry room window and climbing into the residence without the consent of the victim.

Once inside, they've conducted – sorry. They've looked around, locating and stealing a brand-new pair of Adidas gym shoes. A co-offender has discarded his old shoes and wore the victim's pair. They further searched the property, opening various cupboards and taking loose change. One of them has also moved a small tomahawk axe from the laundry into the kitchen area. The – sorry. D opened the fridge and had a drink of cordial whilst inside. They then left the premises through the same way, before going to the neighbouring property, which is 479.

They've gone to unit … by forcing open an unlocked – an unlocked but latched bathroom window located on the second storey. They've climbed into the residence, made their way down to the – and D has made his way down to the ground floor, unlocked the rear door to allow access for the co-offenders. They have again ransacked the house, throwing multiple food and drink items around the property, over the floors and against the walls.

They've accessed an upstairs bedroom in which they searched every cupboard and drawer, locating and stealing a number of jewellery items valued at $560. They've left the premises by unlocking the rear door, before breaking into another unit in the complex. That one is in relation to 481 of '21. They have gone to the side access gate from unit 50 and made their way into the rear of the property, where the co-offender followed behind.

They stole a Shoprider mobility scooter, along with other items. They've made – then D has made his way to unit … where he accessed the bedroom window, lifting the window up and out of the way to gain access. The victim was returning to his bedroom and sighted D in his room. He has yelled out at D, who dropped the window and fled. As he exited – as the victim exited the property, he saw a mobility scooter being driven away.

483 is at …, Brockman. D was with three other co-offenders, each of which were statute-barred because of their age. He has made – they've made their way into the rear yard where they entered the victim's shed, searching through multiple shelves and pulling things out. A selection of garden tools was strewn throughout the rear yard. They've gained access to the house by forcing open the rear glass sliding door.

Once inside, they have searched the property, stole a Samsung Galaxy mobile phone and removed a small bottle of alcohol. The victim had finished a coffee at the neighbour's and returned home. Upon unlocking the front door, she disturbed D and the co-offenders, who have then fled out the rear door down the side of the house onto the road. There was CCTV at the front of the premises which recorded this.

When he was arrested on 2 December and conveyed to Carnarvon Police Station, he participated in a video record of interview but asked for the interview to be stopped prior to being spoken to about it.

In relation to charges Carnarvon 490 and 492 of '21, on Tuesday, 7 December 2021, D attended the … retirement complex in Carnarvon. He has gained entry to the property by climbing over the perimeter fence of the complex which leads directly to the units.

He has walked through the property before he entered the home of the victim through an unlocked rear door whilst the victim, a 71 year old male who resides alone, was asleep on the lounge chair in the living room. He searched and stole the victim's laptop computer, as well as some vehicle keys to a 2006 silver Toyota Kluger station sedan, registration …, before leaving the property. He has stolen the motor vehicle which was parked in the complex nearby. It was identified by unlocking the doors, causing the indicators to flash.

He has driven the vehicle out of the complex – sorry – around the complex before a resident returned home, unlocked the gate, allowing D to drive the vehicle out of the grounds. At about 8.15 pm – and this relates to 492 – police sighted the vehicle drive out of …, Brockman and turn left onto … Drive. Due to the erratic nature of the driving, police closed the distance to the vehicle and were able to identify the make and model and partial registration.

It was then sighted turning left onto … Crescent, which has two entrances. Police utilised the other entrance of … Crescent and were able to sight the vehicle with the accused driving as it made its way down the

street. It passed the police within three to five metres from the vehicle. Police identified the driver as D, as the only occupant in the vehicle and he was not wearing a seatbelt.

Police followed the vehicle, attempted to stop it by activating emergency lights. D immediately moved to the incorrect side of the road to then turn right onto the levee banks at the rear of Brockman. Police turned off the emergency lights and did not follow the vehicle. Due to the manner of driving, the decision was made to not attempt to intercept the vehicle again. He was later arrested, conveyed to the Carnarvon Police Station and did not participate in a video record of interview.

At about 10.30 pm – so this is 493 of ’21. At about 10.30 pm on Tuesday, 7 December 2021, D and a co-offender who’s statute-barred attended …, South Carnarvon. They have gained access to the rear of the property by walking down the driveway to the back. They began attempting to unlock the victim’s rear door, which had been fortified due to numerous previous burglaries and burglary attempts, but D was unsuccessful.

The co-offender stood about five metres away from D, acting as a lookout. D has then attempted the door for at least eight minutes before the occupants woke up and began turning all the lights on inside, causing D and the co-offender to flee from the address. The police were called, and he was arrested, conveyed to Carnarvon Police Station and did not participate in a video record of interview.

For 494 and 6, at about 1.30 am, D and an unknown co-offender attended a two-storey unit complex located at …, Morgantown. They’ve made their way through to the complex before stopping near unit … and …. In relation to 494, D climbed up a supporting pole to gain access to the second-storey balcony of unit …. He has gained entry to the property by opening the unlocked glass door whilst both victims were inside.

The co-offender has stayed on the ground floor, holding D’s footwear and keeping a look out. Once inside, D stole the car keys for the victim’s vehicle, a 2001 Ford Laser sedan, registration …, which were located on the kitchen bench inside the home. D made his way back to the

co-offender by climbing back down the supporting pole. And then in relation to 496, they've made their way to the front of the property, unlocked the car, pushed it out of the driveway, and then D has sat in the driver's seat and then they have driven off in an unknown direction.

This was captured on CCTV from the victim's downstairs neighbour. They were located a few hours later and – sorry. The vehicle was located a few hours later. It was forensically examined. The accused – sorry. D was later arrested wearing the same clothing that he wore during the offence. He was conveyed to Carnarvon Police Station, did not participate in a video record of interview.

In relation to Carnarvon 519, at about 5.05 pm on Tuesday, 14 December 2021, D and a co-offender, K P, who was cautioned and another who is statute-barred, attended the Carnarvon Toy Library located at …, Carnarvon. They've smashed a bottom half-window to gain access and then – sorry – D has crawled through and then opened a door to let the co-offender in. They've entered and gone through multiple rooms, pulling toys out and throwing them over the floor.

Nothing of value was left in the property, so there was nothing that was taken. CCTV from the neighbouring property shows the point of entry. They've left the area. He has tried a door handle – sorry. D has tried a door handle before being yelled at by staff and leaving the property. He was arrested on 16 December and he did not participate in a video record of interview. In relation to 520 of '21, at about 6 pm on the same day with the same people at …, Brockman, they have entered via the adjoining fence.

D removed the security screen from a bedroom window before attempting to gain entry to the property by a glass sliding window. This alerted the victim inside the property that people were there, caused the victim to yell out and ran out the door after the group. The rear yard is covered by CCTV footage which captures this. In relation to Kununurra charge 205 of '21, at 1.35 pm on Monday, 19 July 2021, D was present at Kununurra Leisure Centre.

He and the co-offender entered the centre through the front reception. They walked past the – as they walked past the reception, they've lowered themselves so they could not be seen by the leisure centre staff when entering and passing the reception. They've entered the manager's office where there was a – sorry. D entered the manager's

office where he searched through the office, while the co-offender kept watch.

From within the office, a set of car keys was stolen, and they have then left. D handed the stolen car keys to the co-accused, who used those keys to use – to steal the motor vehicle. That vehicle was later recovered. The incident was captured on CCTV footage. He was arrested on

21 July 2021 and declined to participate in a video record of interview. In relation to Kununurra charge 213, at about 10.53 pm on Sunday, 25 July 2021, D was in company of a co-offender in …, Kununurra.

They've attended the front door of … and the business was closed at the time. They have smashed a hole in the glass panel of the front door before reaching in and unlocking the front door from the inside. They ran into the office and looked around. An alarm was activated, and they have then ran away without stealing anything. Internal CCTV captured this. And on 7 August, D was arrested and he did not participate in a video record of interview.

In relation to Perth charge 3028 of '21, between 11 am on Wednesday, 4 August 2021 and 5 am on Thursday, 5 August, D entered …, Kununurra through a rear sliding door of the home and rummaged through the contents of that home. He stole $400 in cash, a woman's black handbag, multiple identification cards, diabetic medication from inside the house. He has exited through a toilet window. No one was home at the time.

He also stole car keys from the premises, which were recovered by the victim in a bush outside the home. There was a forensic examination which identified D's fingerprints on the glass sliding door window and the inside of the toilet window of the house. He was arrested on 7 August, and no video record of interview was done as there wasn't a responsible adult available. In relation to Perth charge 818, at about 12.30 am on Sunday, 28 November 2021, D was present at …, Morgantown. He was in company with another, who has been charged. They've walked around the rear of the house and cut the flywire around the lock on the rear security screen door. They've attempted to unlock it but were unsuccessful. They went to the kitchen window and used an outside plastic chair to reach it. A knife has been used to cut the flywire of the window screen, enabling access to the glass window. They forced the glass window open and gained access into the address.

The noise of D and the other gaining access to the address alerted the victim, who was in her bedroom. As the victim came out to investigate, D and the other have fled from the address. She sighted her kitchen window open and contacted the police, who attended a short time later. There was a forensic examination, including DNA swab of the rear screen door, and this is how D was identified. He was later arrested and declined to participate in a video record of interview.

In relation to 915, at about 2.20 am on Saturday, 12 February 2022, D attempted to force entry to …, Port Kennedy. He removed a flyscreen to a rear sliding window and, further, attempted to force open the window by applying pressure to it. The victim has returned home at this time and heard noise coming from the yard. They've entered their home and heard D jump over the front gate.

The victim checked the yard and found an attempted point of entry and contacted police. There was forensics done, with D's fingerprints on the window. The flyscreen was on the window when the victim left the address. The window where the fingerprints were located was covered by the flyscreen prior to the offence. He was arrested on 14 February 2022 and declined to participate in a video record of interview.

In relation to 2090, at approximately 12.30 am on Monday, 22 November, D attended …, Brockman. The victim was at home at the time in the lounge room, watching TV. D entered the backyard and placed a chair up against the rear window, smashed the glass – and smashed that glass window. The victim heard the sound of glass breaking and went to investigate, and he observed D attempting to gain entry to the home.

He saw the – D saw the victim and immediately ran from the address, and his DNA was identified from blood left at the scene from the smashed window. He was arrested on 21 March 2022 and refused to participate in a video record of interview. In relation to 2091, at approximately 7.20 pm on 4 March, D was at the car garage of …, Perth. He has entered and walked through the back door of the salon and walked through to the spa area, where he left a push scooter.

He has entered a staffroom before entering another smaller utility room containing a fuse box, safe and other items. He has located a key to the safe at the top of the fuse box, which he used to open the safe, located a bag containing some cash, $185.70. He has selected a purse

containing multiple personal cards from a staff member's bag. A staff member has interrupted him and shouted out. He has then immediately left, leaving his scooter behind.

And his DNA was on the handles of that scooter, and also the incident was partially captured on CCTV footage. Again, he was arrested but did not participate in a video record of interview. In relation to 2093, between 9.30 am and 1.30 pm on 7 March 2022, D was at …, Langford. He gained entry into the premises by removing a flyscreen door, at the rear – the rear laundry door. Once inside, he searched the address but didn't take anything.

He has then left DNA on the screen door removed from the laundry. He was arrested and did not participate in a video record of interview. In relation to 2094, at 2.20 am on Wednesday, 30 March, D attended a Secondary College in Dianella. He has approached the English office of the school and forced his way inside. Once inside, he searched for items but didn't take anything. He left the school grounds shortly after.

The incident was captured on CCTV footage. His fingerprints were identified at the point of entry. Again he was arrested and didn't participate in a record of interview. And, lastly, in relation to charge 291, between 10.40 pm and 10.50 pm on 8 February 2022, D attended …, Banksia Grove. The victim had just left her premises for 10 minutes and, when returning, located her bag and keys missing and she noticed her bedroom window was opened and the flyscreen removed.

The victim located her discarded handbag out the front of the other bedroom window, which had been taken from inside. There was a forensic examination and D's fingerprints were located on a removed flyscreen at the point of entry. And those are the facts, your Honour.

HIS HONOUR: Thank you, Ms De Zilwa. Yes, Ms Salsano.

SALSANO, MS: Yes, your Honour. I will start, firstly, with my section 189(3) application in relation to the convictions recorded against D for home burglary offences. For D, I do say that special circumstances exist and I do adopt the general principles contained in the decision of D v Edgar [2019] WASC 183 from paragraphs 133 onwards. And for D, I rely on a number of circumstances: firstly, D's young age and maturity.

D turned 13 this year on 4 February 2022. That's when he turned 13; of course, his date of birth being 4 February

2009. And for a number of these offences, he was aged just 11 or 12, and then some of the offences of this year, of course, aged 13. So he is still of an incredibly young age, and often the offending does demonstrate someone of a young age in that it is often unsophisticated offending. D still presents as incredibly child-like.

When asked what he likes doing at Banksia, he likes when they're unlocked in the morning because he likes to play in the morning. He is still a child, and he is of a

young age given he is only 13. I also say that D's personal circumstances and difficult family background tie

into the special circumstances, and I do adopt the Youth Justice reports and multidisciplinary reports before the court, and especially that multidisciplinary report for the court dated 8 September 2021.

And I also say that D's mental and cognitive impairments do form part of those special circumstances that exist. D's mother's family is from Perth and his father's family is in Carnarvon. He had a disruptive childhood. He was witness to a number of ills no child should have to. He has ongoing trauma from his father's incarceration – previous incarceration and his mother's passing in 2015.

He is diagnosed in that report with – the multidisciplinary report with a language disorder. He is also diagnosed with attention deficit hyperactivity disorder. And he would meet the criteria – I'm just heading to the page, your Honour, now – of FASD if there was confirmation of prenatal alcohol use, given that he has a number of severe impairments in at least three domains. As I understand it, D is not currently medicated for those disorders. In his time in custody, that hasn't occurred. I also rely, your Honour, on the time spent in detention.

There are three different periods before the court for sentencing today, and at least in relation to – yes. Yes, there's those episodes, your Honour. There's the two detention management reports I rely on, the two – the report that considers the date range 14 February to 31 May, and then the detention management report that considers the date range 1 June to 18 July. Now, your Honour, in relation to education for the 10 days that D spent in custody in April, he only did 10 hours of education. For the month of May that he spent in detention, he only did 37 hours.

For the month of June, he only did 12 hours of education, and for the 18 days in July, he only spent five hours in education. D tells me that today was the first day back in the classroom for, he says, for three months. He says that they have been doing the work in their units or in the intensive support unit where he spent a significant period of time. In relation to the first detention management report, it's described that D was enthused about learning.

He is focused, as well, and consistently demonstrates good behaviour. And in relation to the more recent detention management report, it's noted that D eagerly attends sessions, he has good engagement and a genuine desire to improve his educational outcomes. He is

receptive to learning. And so despite only limited access to education for D, when he is given that access, he really tries his best and is really eager to do that education. What D tells me, he asked for extra worksheets to do in his cell of a night.

And those hours are, of course, significantly less than the hours that are meant to be delivered each day, being 4.5 hours, Monday to Friday. In relation to number 2, the time in the intensive support unit, the two detention management reports, roughly, each consider 50 days in custody. I've counted it. For D's first period, or in relation to the first detention management report, he spent 2535 minutes an intensive support unit non-observation calls, and I've estimated that to be, or I've counted to be, 42 hours.

Yet, in the second or the more recent detention management repot, there's 7800 minutes, or 130 hours, so what that demonstrates is that D's time at Banksia is not getting easier for him; it's only getting harder. And the time in lockdown, as well, is significant in that, in the first period, there's 236 hours and 57 minutes. For the second detention management report there's 214 hours and 50 minutes. And of course, that time in lockdown, at dot point or point number 7 of the detention management reports, only considers time in the units, is my understanding.

So what that tells me – it's a lot of maths, your Honour, but the second, for the second period of time that D has spent in detention, he spent 88 hours more time in the intensive supervision unit than the first, for the first DMR, but he spent 22 hours – well, look, your Honour, it's a lot of maths, but he is getting – he spent 22 hours

different, between the two reports, in lockdown in the units. So what I'm trying to get at, your Honour, is that the time that D is spending in lockdown is not getting better; it is only getting worse.

He is only spending more time in lockdown, because there's 88 more hours in the intensive supervision unit in the second detention management report, and so he is spending more time, and there is a significant increase in the time he spends in that unit. And further to that, D's

participation program – programs – has been impacted. When looking at the programs outlined in the detention management report, a number of the programs, he was listed to attend, but they were cancelled by the centre due to operational reasons.

The Do it Easy program, the Be Solid program – your Honour has got them all in front of you – they were cancelled by the centre due to those operational reasons, so he has had a limited access to programs as well. And in relation to psychological intervention, there were four occasions that that intervention was unable to be facilitated due to staffing and operational restrictions, and it is noted in the second report that the difficulties in managing the rolling lockdowns and extended time in his cell has resulted in that externalised behaviour by D in the property damage and the absconding.

So it is noted in that dot point 5 of the detention management report that the time in his cell and the rolling lockdowns has had an impact on D's behaviour, and then, of course, seen him spend more time in the intensive supervision unit, but when he does see the counsellor, he – it's stated that he engages well during contacts, and he has requested regular support to assist with his coping. That is in the second detention management report, and in that second detention management report, it does say that – I will just find the – it states somewhere that D was not suitable for ongoing support. Let me find – sorry, your Honour.

Sorry, your Honour. I did ask for clarification from case planning and the psychologist at Banksia, because I was wondering why D was assessed as being unsuitable for individual counselling, which is what is stated in the second report, which was surprising to me, considering that D has requested regular support to assist with his coping, and I would have thought that that would go hand in hand with his rehabilitation, and it was said to me that he was

unsuitable due to his young age, cognitive impairments that significantly impact on his language, his memory, his learning abilities, as well as his current low motivation and treatment readiness.

So it is, I think, concerning that ongoing specific counselling, D is unsuitable for, despite that tying into his rehabilitation.

HIS HONOUR: So just tell me where that is.

SALSANO, MS: So, your Honour, on the second detention management report it states that he was assessed as unsuitable for individual counselling.

HIS HONOUR: So, sorry, just give me the report page.

SALSANO, MS: Yes, your Honour, page – yes, your Honour. The report is the one that is - - -

HIS HONOUR: Because there are, in fact, three detention, yes, so is it the 18 July report that you're referring to?

SALSANO, MS: That's right, your Honour.

HIS HONOUR: So on which page?

SALSANO, MS: On page 7 of 8.

HIS HONOUR: Yes. So he was seen on another occasion and assessed as unsuitable for individual counselling, I see, yes, and then it goes on – well, I was going to – I will be going to what comes on after that, but so the bit that you've just gone to, in terms of why you say there was – why he was assessed in that way, where does that information come from?

SALSANO, MS: I then asked for further information from case planning, and I've got it in a separate email, your Honour, just this morning, so - - -

HIS HONOUR: All right. Well, we haven't seen that.

SALSANO, MS: No, your Honour. In any event, I guess, I make the point that he has been deemed unsuitable for individual counselling. I'm sorry. I apologise. I didn't provide the email to the court. The information was provided by the psychologist to case planning, but in any event, I guess, the submission is that contact with D was unable to be facilitated on a number of occasions due to

staff shortages and operational restrictions, so we say, that is, obviously, significant towards his rehabilitation.

So I do say that this time spent on detention has been incredibly difficult for D. It has been noted that the rolling lockdowns and the extended time in his cell have subsequently resulted in D externalising behaviours with property damage and absconding and whatnot, and it is agreed that there have been a number of incidents by D that have seen him then spend time in the intensive support unit, but we say that Banksia is in no way rehabilitative for D.

He is spending significant time in lockdown, with limited access to programs and education, so we say that that can then be taken into account, as well, for why special circumstances exist for D, especially considering the rehabilitative purposes of the section. So, your Honour, I do say that the factors I've outlined, his young age and maturity, his difficult family background, as outlined in the reports, his mental and cognitive

impairments, the time spent in detention, all do form part of the special circumstances that do exist for D, and as such, a 189(3) – well, I ask your Honour to consider that application under 189(3), given those special circumstances that do exist.

Of course, all those things I've mentioned for special circumstances also form part of the sentencing submissions for D. It is, of course, acknowledged and accepted that the offending before the court is voluminous. There's a number of burglaries before the court, including ones which are made more serious, or home burglaries made more serious, by people being present at the address and having to engage with D and his co-offenders.

I do say that they can be distinguished from offences at the upper end, in that it's non-violent offending and, often, unsophisticated offending, and that, I guess, is reflective of D's young age, as well. And so when getting to sentencing, your Honour, I do adopt those other points that I've made in relation to special circumstances, that D has had a difficult family background. He has got a number of diagnoses that mean he is not a good vehicle for general and specific deterrence.

He has had a really difficult time at Banksia and, I can imagine, that time only considering for D with – although it is promising to hear that he is back in the classroom today and that the plan for D is a plan that – he

hasn't returned to Carnarvon. Well, I guess, you have to go via Karratha, but he hasn't been back with his paternal grandmother this year. Obviously, when he was released on that juvenile conditional release order in January, he was issued with that notice to attend court for failing to advise of, or yes, failing to comply with a condition of the order, namely, that he moved to a different residential address.

I would like to just note that D did initially report on five occasions, but then Beyond Youth Justice did start working with D and the family on 22 February and on 3 March, as it was reported, and this is contained in the report about concerns about D's aunty's partner and the violence that he was inflicting on D and his aunty, and it's for that reason that D absconded from that address and then self-selected placements within Perth at different family members.

Now, D isn't really good with Perth, in knowing where he was going. He is unable to really articulate the different suburbs and whatnot, but he did stay with different family members from his maternal side, and he

was, essentially, rendered homeless by necessity. Of course, he should have contacted Youth Justice and sought the necessary supports but, of course, he was, at that time, only just 13 years of age, and most of the Perth offending does occur in that context, where he doesn't have any stability, and he is incredibly transient, and he is a 13-year-old boy in a town that he doesn't know.

Of course, he should have re-engaged with Youth Justice, but for someone with his impairments and difficult family support, obviously, difficult to do. So I would hope your Honour would take that into account in terms of D's compliance on that order when sentencing him today, that he did initially report on those five occasions, but then, obviously, no real engagement with the order, given he did abscond from the address he was meant to be at.

I do also note that there are pleas of guilty to all matters. D was not, as I understand it, convicted after trial, and on the receipt of disclosure, did enter pleas of guilty to those matters today, 291 and 2093 of 2022, but I would hope your Honour would take, of course, into account, the youth, the difficult family background, the impairments, and that conditions in Banksia are no way rehabilitative, and of course, the Youth Justice report indicates that there is 100 days in custody since, well, this year, for these offences before the court.

So I do, your Honour, make at 189(3) application, and also, my sentencing submissions, obviously, have a lot of crossover with that application. Now, the plan for D – well, I do accept my friend's submissions that the 28 days – I will just find the - - -

HIS HONOUR: All right. So you're turning to the review, aspects of the review, the 28 days ought not - - -

SALSANO, MS: Yes, your Honour.

HIS HONOUR: Ought to - - -

SALSANO, MS: Yes, your Honour.

HIS HONOUR: You accept that the 28 days was taken into account by the magistrate - - -

SALSANO, MS: Yes.

HIS HONOUR: - - - when the original conditional release order was imposed in January.

SALSANO, MS: Yes, your Honour, I accept that, and I also don't seek to persuade the court that the breach of the conditional release order is trivial, by no means, given the reoffending and the breach by non-compliance, so I do understand that that order would have to be – yes, I don't seek to argue that that order, the breach of the order, is trivial pursuant to 114, subsection (2)(a) and subsection (3).

So I do accept my friend's submissions in those regards, and I also accept the submission that the conditional release order was, I guess, escalated from six months conditional release order, to 12 months, for a number of – well, for the offences contained, the home burglary offences, contained, on that conditional release order, but I do still say that, in all of the circumstances, considering what I have already gone over, your Honour, in terms of the 189 application, that 12 months was a significant – is a significant – sentence was a young person, for D, for a person like D, only 13 years of age, especially considering the current conditions in Banksia, and what is outlined in those detention management reports, and the time in lockdown.

And the plan for D to return to his grandmother eventually, we say, is another good opportunity for D. He has only spent time with his maternal family this year, at least. It has been some time since he has been back with

his nan. While he is in custody, the person he yearns for the most is his grandmother. I understand he has had one video call with her and, of course, it's incredible difficult for D to have contact with his family, because they, most of his family, do reside in the Carnarvon area.

I understand that D also has a brother in custody, and he has seen his brother once since he has been in custody, during a video call to his nan. So with the added supports that are outlined in the most recent court report, we say that when D is – it bodes well for good plans for D, on his release, to be returned to his paternal grandmother, and it would be hoped, as well, that perhaps the National Disability Insurance Scheme would be something that was also investigated for D, given his impairments, to also support his nan further.

So yes, we just say that 12 months was an incredibly long sentence for someone in D's position. Of course, your Honour would first have to grant the 189(3) application; otherwise, it is acknowledged that D is looking at 12 months detention today.

HIS HONOUR: Anything else, Ms Salsano?

SALSANO, MS: No, I don't believe so, your Honour.

HIS HONOUR: All right. Thank you for that, Ms Salsano. What we're going to do is we're just going to have a break for a few minutes for a couple of reasons: (1) D is pretty bored, so he can just walk around and stretch his legs. Then I will hear from you, Mr De Zilwa, but during the break, a couple of things. If everyone can consider whether they are able to sit late so that I can finish this matter today. It's 10 to 4 now. It certainly won't be done before 5 if we simply keep going. Allied to that, Ms Anderson, if I were, ultimately, to be persuaded that an order at this time is appropriate, I would not contemplate releasing D tonight.

ANDERSON, MS: Arrangements have been made, your Honour, tentative arrangements, a referral to Hope Hostel has been made and approved, and MYBS staff are on standby to transport, if required, and likewise, flights have been arranged for the morning to Karratha, and again, staff are on standby to transport in the morning from Hope Hostel.

HIS HONOUR: What time were the flights?

ANDERSON, MS: Sorry, your Honour.

HIS HONOUR: Look, I won't put you on the spot. Well will adjourn for a few minutes.

ANDERSON, MS: No, I think I've got them at hand – maybe not.

HIS HONOUR: Well, look, we can adjourn for a few minutes, you can check all those things, and then I will come back and hear from Ms De Zilwa.

ANDERSON, MS: Certainly, your Honour.

(Short adjournment)

USHER: All rise. Please be seated.

HIS HONOUR: Ms De Zilwa, before I hear from you, there is a matter, Ms Anderson, that I just wanted to raise with you. And also Ms Salsano. It's in effect to you, it's in relation to that email, which Sentence Planning provided you. You're linked and obviously it seems from your office and on your computer. So I would ask that you email that through to Ms Associate, please, so that we can print it and provide it to everybody and put it on the court record.

DE ZILWA, MS: Yes.

HIS HONOUR: Ms Anderson, as the representative of Youth Justice, I have to say – if I can put it as neutrally as possible – that assuming that that – and I've got no reason to doubt it – it is an email from Sentence Planning to counsel. I am somewhat surprised that in relation to a detention management report, which is a court ordered report, that would – there would be supplementary written and obviously relevant information provided directly to counsel, without you all – us being aware of it, it would seem.

ANDERSON, MS: I'm gobsmacked. Sorry, your Honour.

HIS HONOUR: Well, you can be less neutral than I can be, Ms Anderson.

ANDERSON, MS: I have no knowledge of what you're referring to. We certainly haven't been privy to anything other than the documents before us.

HIS HONOUR: Well, neither do I. That's the - - -

ANDERSON, MS: And I cannot give you an answer or understand why that would have occurred.

HIS HONOUR: Yes. Well, that's – no doubt you will follow it up, Ms Anderson.

ANDERSON, MS: Yes, absolutely.

HIS HONOUR: All right. If you can send that through, Ms Salsano.

SALSANO, MS: Yes, I've sent it to Ms Associate, Ms Anderson and Ms De Zilwa, your Honour.

HIS HONOUR: Thank you.

ANDERSON, MS: Your Honour, while I'm on my feet, did you want any more information about - - -

HIS HONOUR: Just your flight. So just - - -

ANDERSON, MS: Yes, 10.45 tomorrow morning.

HIS HONOUR: 10.45, okay.

ANDERSON, MS: And I've reconfirmed with MYBS that they are – they're waiting here to see the outcome of sentencing.

HIS HONOUR: Yes.

ANDERSON, MS: And they would be able to transport D, if required, to Hope Hostel and then again to the airport in the morning.

HIS HONOUR: I'm never less than impressed by Youth Justice, Ms Anderson. Ms De Zilwa.

DE ZILWA, MS: Sorry, your Honour. I was reading the email. Just first in relation to the section 40 review, the State's position is that that needs to be considered first and as a separate issue to the section 189 and sentencing in relation to the charges dealt with today. Does your Honour wish to be heard more on that, in terms of why we have that position?

HIS HONOUR: That is the way that I will be approaching it.

DE ZILWA, MS: Okay.

HIS HONOUR: And I've read your – as I say – very helpful submissions on the section 40 review.

DE ZILWA, MS: You have read them?

HIS HONOUR: Yes, I have.

DE ZILWA, MS: Yes, okay. So I won't go too much into them and I adopt those submissions into my oral submissions now. In terms of the type of order that was made by the learned magistrate, the State says that the type is correct, given the charges that were before the court, where the majority of them involved people being home. And some of the attempted home burglaries were not because he couldn't get inside but because he was disturbed at the time by the occupants there.

So even though it might not be – it might be considered on the rudimentary and potentially optimistic at times, it's still brazen and persistent offending. For instance, there was that one charge, attempted home burglary, where he tried to open the door for eight minutes. Sometimes he goes into the residence with people there and he knows people are there. So that's quite dangerous. And the case law is clear that that is the worst type of home – is at the higher end of the type of offending.

However, in terms of the length of that term, the State accepts that there were some significant considerations that weren't considered, such as how young D is, that he is in isolation from country and also that their compliance on the order wasn't considered. So having regard to that, we accept that the 12 months is at the upper end and probably the highest end of the range.

We do accept that it can be reduced by your Honour today. We say that perhaps four to eight months detention is appropriate, not specifically to this case but being the range for D.

HIS HONOUR: So you're not trespassing on Barbaro, Ms De Zilwa?

DE ZILWA, MS: No, your Honour.

HIS HONOUR: Keep going.

DE ZILWA, MS: Yes. I think my friend agreed that the 28 days of custody that was considered by the learned magistrate, that was served before 10 January order,

shouldn't have been considered the way it was in terms of backdating. So that also needs to be considered in terms of what order your Honour makes today.

I'm not sure, as your Honour identified earlier, what the specific terms of detention were for each of the home burglaries that were given a 12 month detention term and I think it's accepted that those should all be – well, we accept that those should be reduced for the compliance that D did have on the six month JCRO. He did participate in the supervision for a period of time and some of the lack of engagement was more to do with his circumstances, rather than his efforts.

However, in saying that, he has had multiple chances on orders. Before he was put on orders, he was dealt with by JJT referrals for home burglaries and burglaries. It's notable that the first charges before the court in 2019 were committed just 10 days after he turned 10. So over the past – though he is quite young, he has had about three years' worth of opportunities to comply with orders and to stop offending in the way he is.

Can I have just one – so I now move on to section 189, your Honour. The State opposes that application. The first thing that the State wishes to raise is that the only purpose that it could be made today is to circumvent the legislation in terms of the third striker home burglary provisions in the Code. And the reason the State says that

is because, as the email suggested last night from my friend and also her application in court today, it was only made if the State submitted that D was a third striker.

So the State says the only inference available is that the application is made to circumvent that legislation. The discretion in section - - -

HIS HONOUR: But it ordinarily would be made in the context of a sentencing exercise. Theoretically it might not be, but it is only ever in terms of the application generally going to be made in the context of a sentencing exercise.

DE ZILWA, MS: Yes, your Honour. But the State says timing of it and the fact that it only deals with home burglary charges shows that the intention is to circumvent that legislation.

HIS HONOUR: Does the lawyer's intent matter?

DE ZILWA, MS: If the purpose of making the application is – so the discretion in section 189(3) is to be exercised pursuant to the rehabilitative purpose of the Act and not for the purpose of avoiding the repeat offender mandatory sentencing provisions, which is what was found in B (a child) v Hepple.

HIS HONOUR: And Hepple.

DE ZILWA, MS: Yes, your Honour.

HIS HONOUR: So within the context of the Act. It's an application which the Act caters for.

DE ZILWA, MS: Yes, that's correct.

HIS HONOUR: Carry on.

DE ZILWA, MS: So now, in relation to the special circumstances and distinguishing D's matter from D v Edgar, in D v Edgar, he – the D was not a primary offender. In this case before your Honour, D cannot be said – is clearly the primary offender, especially because quite often he is the only person involved in the offence.

HIS HONOUR: Well, except for all his young mates that are too young to even be charged.

DE ZILWA, MS: No, there are some offences where it's just him that goes into the house.

HIS HONOUR: Sure.

DE ZILWA, MS: And then, I was going to turn to the next one, where in D v Edgar, D was participating in the offending with older family members. In this situation, he is the same age or older than whoever he is with. So again, that's distinguishing the two matters. Again, D did not participate in any damage to property. The same cannot be said for D. He has gone in and there's some pages in the brief, which shows the mess that was left behind. He has used a knife on at least one occasion to try and gain entry into the house. Another thing for D is that he did not conceal his identity and was easily detected. I guess – his identity, he didn't try to deceive in terms of covering himself, but he did try to sneak around the victims when he knew that they were home. The offending in D v Edgar was all during the daytime and when no one was present in the dwellings.

Again, that can't be said for D, as the offences happened at all hours of the day and night. And, on my calculation, on 19 of the occasions – so there's 14 home burglaries on the order, six attempts, eight burglaries of a place being a store. Of those, 19 people – on 19 occasions, people were home, or they were at work.

So in majority of his matters, people are there and so there's that increased risk of confrontation, especially confronting in the later charges, where there was that spree between two unit blocks and sharp items have been taken and left at other properties. Which just goes to the persistence and the brazenness of his offending. The last one is that the offences were not obviously planned and were rudimentary in execution.

The State can accept that it's similar in this – for D's offending. In relation to the age and maturity, it's accepted that they are – D v Edgar and D, they are of a similar age and cultural background and similar mental cognitive condition. However, in terms of rehabilitation, it's not evidence in D's history that he has remorse, though he did make admissions at the beginning. He stopped making those admissions and then he also - - -

HIS HONOUR: Well, there stopped being responsible adults that could even be present to sit alongside him at an interview.

DE ZILWA, MS: I think that was on one occasion, your Honour, yes. There were I think two occasions where the matter had been listed for trial. However, obviously there has now been pleas to everything. It is accepted that some of the reason why he doesn't engage with the orders is because of his transiency and stability issues.

But it also seems, from the reports, that he doesn't like to follow rules at home and that has contributed to why he has had to go between different living arrangements. I forgot to mention earlier as well that there is some deceit in his offending. In the one occasion, two offenders were at the front door, distracting the homeowner and D and another have snuck into the house. On two other occasions, when they have been – one, he was with somebody else; one, he was by himself.

When confronted, he has asked for water and then stolen the person's handbag before leaving the address and looking through the content just outside the property. Lastly, the time in detention. It is accepted that the conditions in Banksia are harsh. However, it seems that D

has been able to engage in some programs as much as they've been offered. My friend spoke of the lockdown hours difference between the first DMR report and the second report.

I haven't done the exact math, your Honour, but it's not accepted from the face of it that it's showing that things are getting harder in terms of lockdown hours because the first report, sorry, dealt with less days than what the second report dealt with. So that could be a major explanation as to the big difference in hours spent in custody and in lockdown. It has already been accepted I think that the offending can't be characterised as trivial.

But what is significant is that protection of the community is paramount. Breaking into homes when people are there and deceiving them is just not acceptable. There is no real evidence of special circumstances that the discharge of the convictions for the offences, which are subject to the application and the resulting for shortening of the period before the convictions will be expunged, will serve the purpose of rehabilitating the application – sorry, D.

His rehabilitation would not be facilitated by way of a discharge of his convictions pursuant to section 189, subsection 3 of the Act. Depending on the sentencing that your Honour gives in relation to the section 40 matters, a 12 month JCRO may very well be appropriate to assist D in his rehab, as he will have support in Carnarvon on that order. So if I could just have one moment. Those are the State's submissions, your Honour.

HIS HONOUR: Thank you. D, you can remain seated. I'm going to speak for a long time, all right. I don't expect you to listen to everything I've got to say but right at the end, I will tell you what you need to know. Understood? D is now 13 years and five months old. He was born on 4 February 2009 and his young age is the most important consideration in each of the three separate matters I am to determine today.

The second most important consideration is, at that young age, D has now spent 100 days in custody, to which he is entitled to credit for. He has previously spent some other time in custody, but counsel are agreed that there is 100 days of credit due to him as of today. The matters that I'm required to determine today – and I'm giving these reasons verbally now. It may be necessary to edit them

later because it is a section 40 review and once redacted will be on the court's website.

But for reasons which will become clear, it's simply not possible to adjourn the matter to prepare written remarks. So the matters which I have to determine today are firstly a section 40 review, which is brought by Ms Salsano on D's behalf, review of a 12 month total sentence of detention, which was imposed on him on multiple charges on 10 June 2022 by the learned magistrate sitting in the Perth Children's Court.

Secondly, I am to deal with the sentencing following D's pleas of guilty to home burglary charge 292 and a burglary with intent in a dwelling charge, charge 2093. D entered his pleas before me earlier this afternoon and, in the circumstances, I've decided it's not necessary to obtain any further reports and to proceed with sentencing on those matters.

Thirdly, there's an application brought on D's behalf pursuant to section 189, subsection 3 of the Young Offenders Act, a verbal application to relieve D of the effect of convictions, home burglary convictions, effectively to relieve him of the effect of a third strike, which those convictions – for the purposes of the repeat offender legislation – on 291 and 2093, would otherwise be and then attract mandatory sentences of 12 months detention. So I'm to deal with all three of those matters.

I'm going to deal with the review pursuant to section 40 first. The preconditions of section 40 review are established. The court below on 10 June was constituted by a magistrate. There were findings that the charges which the magistrate considered had been proved. Some of those findings made by the magistrate, the majority of the findings having been made previously by another magistrate. But, thirdly, the magistrate on 10 June made orders in

consequence of all of the findings in relation to those charges before him and now the majority of them are before me.

The principles applicable on review are settled. It's not necessary to show error, although establishing an error which led to a wrong outcome would be sufficient to deal with the matter again. Section 40 is a fast and informal method by which magistrate's sentencing decisions can be reviewed by the president. On a section 40 review, it's a hearing afresh.

I consider and have considered all of the materials that are before me today, which include reports and information which were not before the magistrate at the time of his sentence. It's relevant we hear this review is 40 days after the learned magistrate's sentencing, during which time D has been in custody and I've got both an updated Youth Justice report and an updated Detention Management report about D's experience in custody, which I'm going to turn to.

Ms Salsano's submission is that the total term of 12 months imprisonment that D received was manifestly excessive, which is really picking up appeal language. And this is not an appeal but I'm not being critical of her in that respect. It's clear what she means when she says that. She says that is by reference to D's very young age, his background, his cognitive impairments, his experience of custody and the fact that he pleaded guilty.

D's position is also that the breach of the conditional release order that he was on at the time of appearing before the learned magistrate and the resentencing exercise, which was undertaken by the magistrate in relation to those charges for which he was on a conditional release order, could not have led to resentencing by way of 12 months detention, which in relation to some of the charges – and I will come to them shortly – was more than a sentence that D was subject to on the original conditional release order.

Now, the State agree with that last aspect of Ms Salsano's submission. And they say further that the magistrate made a mistake in his calculation of credit for time in custody when he sentenced D to a sentence of detention. They ultimately say though that the sentence was within the range of proper sentencing discretion, and they submitted ultimately that a 12 month sentence of detention in relation to all matters, but perhaps one served in the community is something that would be open to the court. But certainly they say that the sentence imposed by the magistrate was within the appropriate range.

It's of some note that at the time of the original sentencing under review, the State conceded at that time that given D's time in custody to that point, he could have been released on a conditional release order. So on the sentencing which resulted in 12 months immediate detention, the State's submission to the learned magistrate was not that further immediate detention was the only appropriate disposition.

In relation to the matters on review, I've concluded that his Honour erred in his approach to sentencing and also in relation to his ultimate sentence in the following ways: firstly, it was identified by the prosecutor on the day, to his Honour, that D was in breach of a six month conditional release order by reoffending. That's at transcript 10. Now, there was also a breach before his Honour that D had not complied with the terms of the conditional release order.

That was not put to D and the matter proceeded on the basis of D really being in breach by reason of reoffending. Counsel again – Ms Salsano, who appeared – accepted the breach and it's submitted that D ought be given another opportunity on a conditional release order. In that sense, Ms Salsano's submission before the learned magistrate and the State's in relation to the sentencing were effectively to the same end.

Turning to the error made by the learned magistrate; for breach of a conditional release order, only two options were really open to the magistrate in D's circumstances, under section 116 of the Young Offenders Act. The order should have been cancelled and it was not done so expressly. It should always be done expressly.

And then either another conditional release order substituted, or D should have been ordered to serve so much of the term of detention as his Honour considered appropriate, provided that the court was bound to reduce that period of detention in proportion to the extent that D had complied with the conditional release order. That's the effect of section 116, subsection 2 of the Young Offenders Act.

There was a report before his Honour that notwithstanding that D had breached by reoffending and notwithstanding that there was a breach by non-compliance before the court, D had initially whilst on that conditional release order reported on a number of

occasions, engaged with Youth Justice and there was evidence of performance on the order, albeit not for a lengthy period.

Now, the sentences that were imposed originally for the conditional release order – although it was simply referred to as a six month conditional release order before his Honour – I'm not being at all critical of his Honour for that because D's record does not reflect the individual sentences that were imposed by the learned magistrate, who

sentenced D on 10 January 2022 in the Carnarvon Children's Court.

Now, that has been a problem with the record keeping, initially because the electronic record keeping system didn't allow the entry of individual sentences of detention on conditional release order matters. That problem was remedied last year, consequent upon my decision in RW. But it has taken some while, sometimes because JSOs don't enter the individual sentences of detention. As I've made plain in RW, the individual sentences of detention must be recorded.

Now, the learned magistrate in Carnarvon did record individual sentences of detention, even though they were not before the learned magistrate on 10 June. I've obtained the original order and I'm going to read those individual sentences in, so that there can be no doubt about what they were. So on charge 21, aggravated home burglary, it was a sentence of two months. Charge 74 of '21, two months.

Charge 328 of '21, two months; 330 of '21, two months; 367 of '21, two months; 383 of '21, two months; 473 of '21, two months; 475, two months; 477, two months; 479, two months; 481, two months; 483, two months; 490, two months; 492, two months; 493, two months; 494, two months; 496, two months; 519, which was an aggravated burglary with intent, six months – that was the head sentence – 520, two months; KR 5205 was two months; 213, two months; 3028, two months; 175, one month; 177, one month; 190, one month.

All those sentences of detention were concurrent but not ordered to be served immediately; ordered to be served under the auspices of a six month conditional release order. But each of those sentences of detention was, for the purposes of subsequent breach and reconsideration pursuant to section 116, the maximum sentence that could have been imposed on any resentencing exercise. And thus so, when his Honour the learned magistrate in this case came to impose sentences on D following the breach and

implied – or following the implied cancellation of that conditional release order and then when he came to impose the sentences, the sentences that he in fact imposed, which were – and I will just go to them – were as follows:

I sentence you to –

This is at transcript 16:

> I sentence you to 12 months detention on all the home burglary offences. I won't read out the numbers. On the simple burglaries, not on homes, six months on each of those. The steal motor vehicle, three months, I
>
> give you on that. But generally, it's 12 months for concluded home burglaries, six months for what aren't, three months for the others, all concurrent. That makes a total of 12 months.

Clearly those sentences imposed by the learned magistrate in respect of the charges which were the subject of the January conditional release order, were non-compliant with section 116 of the Young Offenders Act in that they were greater – some of them very substantially greater – than the sentence of detention which was imposed by the magistrate in January.

Equally clearly, his Honour failed to give any credit for D's performance on the conditional release order because none of the sentences were discounted to reflect that. The second error that the learned magistrate made was in D's favour in giving him 28 days credit when calculating the backdating of the sentence that he imposed on D. That was double-dipping and in my view contrary to section 119 of the Young Offenders Act.

D had already been given credit for the 28 days he had spent in custody by the learned magistrate in Carnarvon, when the learned magistrate released him from custody and allowed him at that point the opportunity of the six month conditional release order. And those days in custody were not available to D to be given credit for again. And Ms Salsano properly concedes that submission by the State.

The third express error that his Honour made in the sentencing is that although he recognised that D had pleaded guilty – and that's at transcript 14 – to some matters which were before him for the first time, he failed to specify the discount he gave to D for his plea on those fresh charges. The Court of Appeal has said that section 9AA applies to the sentencing of young offenders under the Young Offenders Act and I have said it repeatedly.

Now, the only one of those matters before me on review is charge number 2090, the attempted home burglary. On that charge, it is clear from his Honour's approach to calculating the appropriate terms of detention – which I've just read out at transcript 16 – said he treated the

burglaries as a job lot, depending upon the nature of whether it was a home burglary or otherwise.

Thus in effect it's clear from his Honour's sentencing remarks that he gave no considered discount for the plea of guilty that D entered on charge 2090. The fourth error that his Honour regrettably made is at transcript 15. His Honour said this:

> What's mostly against you is you committed these new offences while you were on a conditional release order – that is suspended detention, for numerous home burglaries as well.
>
> What's also against you is that in the Detention Management report, which sets out time in lockdown, time in the Intensive Supervision Unit, it sets out also some of the reasons why – and that's largely to do with your misconduct towards Banksia Hill staff who are doing their level best to look after you – that you continued to misconduct yourself, if not assault people at Banksia Hill, as mentioned in the two and a half pages – two pages running from page 3 onwards. So that's against you. You haven't modified your behaviour, even whilst in custody.

Those remarks indicate that his Honour regarded D's behaviour in Banksia Hill as an aggravating consideration in sentencing, in the same way that D, having offended whilst on a conditional release order, was an aggravating consideration.

For reasons that I will come to, while D's behaviour in Banksia Hill was poor and in no way mitigatory, the reasons for at least some of his poor behaviour and D's experience of detention, which details were before the learned magistrate and the subject of submissions by counsel, was not aggravating but mitigatory and ought to have been identified by his Honour as a reason to reduce D's sentence.

I will deal with the factual reasons for that later, for when I address D's time in custody in more detail. Now, it follows from those express errors made by his Honour, that the review must be allowed. And, accordingly, his Honour's orders be sentences of detention are

discharged and I will shortly substitute other orders and resentence. Turn away then from the review and to the sentencing, resentencing exercise and in the course of that, I will also deal with the section 189 application.

The facts of D's numerous offences have been read out by the prosecutor, admitted by Ms Salsano and I'm not going to repeat them. They will simply be incorporated. D is before me really for sentencing now in relation to almost all of the serious offences he has committed, going back to August of 2020, following breaches of not only the orders I've already spoken about but breaches of previous court orders.

The offences which I am to deal with were committed by D between the ages of 11 years and five months old and 13 years and one month old. The offending was accurately described by the learned magistrate in summary form as D having wreaked havoc on the people of Carnarvon and also more recently, but to a more limited extent, in Perth. By the number of offences on homes and businesses over – the magistrate said – a three year period. In fact, it's closer to two and a half years.

Ms De Zilwa's and my calculations read slightly different but not much. There's a total of 13 home burglaries, six attempted home burglaries or with intent, four business burglaries, four burglaries with intent, two steal motor vehicles and in fact there's another burglary with intent. That's that one that he pleaded guilty to today, which had been listed for trial.

That two and a half year spree of serious offending is why D was on the conditional release order when he appeared before the learned magistrate in June and why he had been remanded in custody after offending on the conditional release order and also on bail when he was in Perth.

The offences I'm dealing with for the first time today are the most serious that D has faced because – and that is the home burglary in Perth, 291 and 2093 – because they were aggravated because he was on a conditional release order and bail and because the potential penalty, given that it's agreed that those two offences count as a third strike, because the potential penalty for D is a mandatory sentence of 12 months detention.

A mandatory minimum sentence of 12 months detention, either to be served in the community or immediately in Banksia Hill Detention Centre. Now, the facts of those two burglaries are not more serious than the facts of some of the other burglaries. The facts of some of the other burglaries are indeed more serious, particularly those where homeowners, elderly people, were confronted in Carnarvon.

I, of course, in sentencing have regard to the impact on victims of burglaries but not only home burglaries, which are the more serious and which is reflected in those penalties – the maximum penalties and the mandatory minimum penalties for third strikers – but also in relation to businesses. The reason parliament has prescribed a regime of mandatory penalties is because of the effects of invasion of people's homes by offenders in the form of a home burglary. It's not so much the taking of things.

It's the loss of security, both physical and psychological. And many of these victims of D's burglaries, even so long ago, would absolutely no doubt recall them. They would have changed their ways of life. They would have changed their security systems. They would have less trust in their neighbours and people around them and be constantly anxious that someone is going to come into their private space, invade it and destroy their security.

Now, the matters before me for the first time, D has pleaded guilty to. The pleas are not early pleas, certainly not at the earliest reasonable opportunity. I would ordinarily, in relation to 291 and 2093, where there has been a delay of this sort, have only allowed a 15 per cent discount to D. But I'm mindful of what Ms Salsano has explained in terms of the difficulty of obtaining instructions, which I accept for reasons which will become clear in a moment.

In terms of the difficulty that Ms Salsano has had in speaking to D at Banksia Hill, I'm going to increase the discount on those matters to 20 per cent. Charge 2090, which I have to deal with again, consequent upon my review findings, where the magistrate did not give a plea of guilty discount – was a plea, I'm satisfied, at the earliest reasonable opportunity and there should be a 25 per cent discount on the sentence in relation to those matters.

On all of the other charges, the magistrate in Carnarvon, in January when he imposed the conditional release order, took into account the pleas of guilty and there's no need for me to consider any of those issues again. Then turn to D's personal circumstances. He's the youngest of three. He is from Carnarvon. Had a very dysfunctional early childhood. His mother and father were in an abusive relationship. He was exposed to alcohol abuse and domestic violence from a young age.

His father has been imprisoned and tragically his mother died in 2015 when he was only six years old. He has been cared for by his grandmother, Ms W, for much of his life now. He's very close to her. But over the last few years, she has struggled to manage D's behaviour and high needs. D underwent and participated in a multi-disciplinary examination and commonly called a FASD report. An assessment was prepared in September of 2021. That was undertaken when he was 12 and a half years old.

He wasn't diagnosed with FASD because prenatal alcohol exposure could not be established, his mother being deceased. There is a family history of FASD. D's brother has been diagnosed with FASD. Of significance though, the report confirms that D has severe cognitive impairments. Firstly, in relation to aspects of his memory function. Secondly, in relation to language, particularly his receptive language.

Thirdly, in relation to attention deficit. The last two impairments are so severe that he is diagnosed with a language disorder and ADHD. What the report says at paragraph 43 is that:

> D exhibited qualitative clinical features of ADHD. He had considerable difficulty maintaining his attention throughout the assessment. He was highly restless and fidgety, often getting up out of his chair and moving about the room. He was reluctant to put forward sustained effort and required encouragement to attempt tasks he perceived as difficult.
>
> He demonstrated low frustration tolerance, banging on the window behind him towards the end of the assessment. He has a somewhat impulsive response style, but often self-corrected errors made after impulsive responding, which suggests some ability to self-monitor his impulsive behaviours. Further, D's general non-verbal intellectual function was found to be very low and the implications of that are dealt with at paragraphs 83 – beginning at paragraph 83 of the report.
>
> Due to D's severe attentional deficits, he may fail to take in information that has been communicated to him at times. His language ability is severely impaired. His receptive language deficits may result in a failure to understand rules or boundaries that have been explained to him. Furthermore, it's important to note that he may indicate he has understood what has been

> said by responding yes, even in instances when he has not actually understood.

I'm not going to read them all out but over the page:

> D has, in terms of his memory impairment, may be unable to remember rules and boundaries or be unable to follow instructions in relation to what is appropriate behaviour. Further, given his very low non-verbal intellectual function and his language difficulties, D is likely to have limited ability to solve problems, make informed decisions and understand the possible consequences of his actions. This may lead to maladaptive attempts at problem solving.

I will skip over some which are not relevant there so much but getting to – problem solving:

> Such as physical aggression or a maladaptive attempt to resolving personal conflict. D is –

Going on at 90:

> D's ADHD – he has a history of being unable to tolerate long periods of sustained concentration. He will struggle to maintain attention over lengthy sessions. He will do best with support programs which are a short duration. D has limited familiarity with the alphabet. He can't be expected to read paragraphs or documents.
>
> His clinically significant memory deficit means he will require support to remember and attend appointments on time. He will require repetitions of information. In terms of the recommendations, D would benefit from ongoing structured and consistent home and schooling routines, as well as positive behaviour in dimension.

There are then recommendations in relation to dealing with the ADHD, including:

> Building a structured scaffolding with consistent school and home routines and consideration of individual based therapies, such as occupational therapy and clinical psychology.

I agree with the conclusions of the FASD report and the recommendations which are made. Turning to other matters personal in relation to D, there are some real positives. He does not have an entrenched history of substance abuse and it was only when he started coming – he moved down to Perth, which I will deal with shortly – that he started

using cannabis, distressingly in the company it would seem of other older family members.

D, on the basis of what I've read, is a very good footballer and keen on sport and basketball and he has a good visual memory. Now, because of his grandmother's struggles with managing D's behaviour, she, with the assistance of various government agencies, has tried a number of alternative family placements for D. 2019 in Karratha – that ultimately failed, and D went back to his grandmother, Ms W.

Then another family placement was attempted in Kununurra in 2021. That also failed and he went back to Ms W. Then a placement in Perth was attempted. I turn then to the Youth Justice report. This is the most recent one, which was prepared for me, of 18 July. At page 3 and going over:

> Placement in Perth broke down due to D alleging physical violence occurring against him in this placement. Despite a referral being made at the time to the Department of Communities, Child Protection and Family Support by another external agency, D left the accommodation on 9 March. D then commenced self-selecting accommodation between extended maternal aunts in both Perth and Gosnells. Between then –

that is March and April of 2022 –

> D's whereabouts were unknown.

This is a 13 year old boy and of course that coincides with the period when he was briefly on bail and committed one of the offences. He was subsequently apprehended and remanded in custody. Over the page:

> Ms W claims that she is now in a better position to totally focus on her grandson and support his needs. Ms W has engaged with … College to ensure D resumes with his education immediately upon his return to Carnarvon.
>
> She has also organised an appointment for D with a paediatrician in August to review his ADHD and need for medication. Ms W thinks that the correct dosage will assist in managing D's behavioural issues. D's schooling has been very disrupted.

He has not attended regularly at school since he was in year 6 in Carnarvon and, at that stage, he really was the

equivalent level of year 2. The plan to re-enrol him in … College is a good one. D is still fundamentally illiterate and keen to learn. I want to turn then to D's experience of detention. At the time of sentencing before the learned magistrate, the learned magistrate had a Detention Management report before him.

As I said right at the start, I've got an updated Detention Management report of 18 July. The one before the magistrate was referred to and is dated 1 June. In relation to education, the report says this – there's an assessment of D's education level and what the plan was for him in Banksia, which included individual literacy support sessions and explicit instruction to address gaps in D's numeracy and to bring him up even to introductory level for Certificate I.
It then goes on:

> Due to operational reasons, D has had reduced access to education since the submission of the last management report. He has continued to engage well in education and readily participates in daily review phonics lessons, having recently completed work on words, such as brave and grace. He has also completed work on number sequences and two digit addition. D continues to attend individual literacy support sessions and is making progress on unit 10. He has engaged in work building.

And the report goes on:

> D is very keen to learn and has attempted to correct extra work in his cell. D's teachers have reported that D has been enthused about learning, has focussed well and consistently demonstrated good behaviour.

Now, all of that needs to be understood against the background of D regularly being in the Intensive Support Unit and subject to rolling lockdowns at the centre. Now, D's periods in the Intensive Support Unit are recorded. Ms Salsano has addressed them. At that time, he had been in the Intensive Support Unit on 15 February, 17 February, 18 February, 19 February. Then there's a gap until March – 19 March, 20 March, 21 March.

Then a gap – 21 April, 22 April. A number of incidences are recorded. These are the ones that the magistrate referred to in his sentencing in an aggravating way. And they are incidents of D kicking a window, not following staff instruction, threats of self-harm, flooding his wing area, smashing his television, abusing staff, not

following instructions. And on 25 May, an out of bounds incident involving a number of detainees. So, as I say, poor behaviour.

Certainly not mitigatory but not capable, it seems to me, of being an aggravating consideration in D's sentencing because there's more which yet needs to be considered. Much of that behaviour was punished by the centre and was the reason that D was in the ISU. D at that time received psychological counselling when he needed it and the report records 10 instances of psychological support for D.

The lockdown hours though are summarised by Ms Salsano today, but were also summarised before the learned magistrate. The lockdown hours are significant. The lockdown hours are not in any way a consequence of D's behaviour.

They are a consequence of operational considerations, which is what the centre calls it, which relate to staffing. What Ms Salsano submitted to the learned magistrate at that time was as follows:

> It is clear that the staffing issues at Banksia can really be seen from the report. For example, in education D spent six days in February. He only did one and a half hours of education. In the three days he spent in Banksia in March he did no education. The nine days he spent in April he only did 10 hours and the 31 days he spent in May he did 37 hours, well below the four and a half hours that he is meant to do each day.

So that summary that I read a moment ago, D's performance or willingness to be educated and the progress that he was making is against a background where, in fact, he had, through no fault of his own, very limited opportunity to engage in education because Ms Salsano's analysis of the records was accurate when she put it before the magistrate. She made a submission about the time in the ISU and then went on to say in relation to the lockdown hours:

> The report says that the lockdown hours are recorded against 9.8 hours six days a week, sorry, an 11 hour, 15 minute day. And, I mean, your Honour, you can see that on 18 February he was locked down for 10 hours. That meant he spent only an hour and a half out of his cell, 19 March, 11 hours, 30 minutes. There is numerous times that he spent very limited time out of his cell and the lockdown hours are very significant

> for D. It's something he has found very challenging, those rolling lockdowns and the time in his cell.
>
> I think that is something that your Honour can take into account that the conditions in Banksia are in no way rehabilitative at the moment. They are purely punitive. And it has been incredibly difficult, especially for someone aged 13 years of age, who is a long way from home. He had no face-to-face visits until recently. He hadn't had a face-to-face visit with his grandmother and that was able to be arranged by video link.

And Ms Salsano has referred to that again there has just been the one visit with D. Those submissions were made to the magistrate. And although Ms Salsano quite reasonably presented a summary of the lockdown hours, I'm not going to read out the lockdown hours at that date, but her summary accurately reflected the regime of rolling lockdowns that was before his Honour at the time of the sentencing in June, which those lockdowns are no fault of D's and made his experience of detention very much more difficult.

Now, I want to move because there has been – well, I was going to anyway, but there is some dispute as between Ms Salsano and the State about D's more recent experience of detention over the last month. So since he has been sentenced on 10 June and up until now, which I have an updated detention management report of 18 July. Now, we will do it in roughly the same order. In relation to education, this is what the position is over the last month.

Participation in education. For the timetable month of June, total attendance hours, 12 hours, five minutes. So that's against an expectation of four and a half hours schooling each day for a child in detention. July, five hours. Youth education advises then that D continues to work at those same levels that he was previously, but the report then goes on to say this:

> Due to operational reasons D has continued to have reduced access to education since the submission of the last detention management report. When D has been able to engage in education, he has often continued to participate to the best of his ability, apart from a few instances when he was preoccupied by personal matters. Work packages were created for D to undertake whilst in his sleeping quarters in Karakin Unit as well as in the intensive support unit, if able, and to continue over the two-week school holiday closure.

As will be apparent from what I've said already in relation to D's cognitive impairments, whilst the centre's teachers are acting as best they can in the circumstances, which circumstances are beyond their control, the provision of education packs to D so that he can in some way self-educate and teach himself to read and write whilst locked down in his unit is not any form of education which the community or court would recognise or accept in relation to a child who is in the community and not in custody.

The operational reasons for the denial to D of education, such that in July he has had a total of five hours and in June a total of 12, those operational reasons are nothing to do with D. They are because of the lack of staff in the centre and the fact that D has been locked down for very lengthy periods, which I'm going to come to. It goes on:

> Notwithstanding those difficulties and notwithstanding what I said before about the conclusions of the multidisciplinary report that D needs consistent structure and support. Despite the fact that the centre has not provided him with that consistency, he has continued to eagerly attend the literacy support sessions when able and he is still working.
>
> He has continued to show good engagement and a genuine desire to improve his educational outcomes. At times he has demonstrated difficulty focusing, has not been in a frame of mind because of personal matters and he has had minimal opportunities to participate in education most recently because of the school holidays. In general, he is receptive to learning and remains positive and he adheres to classroom expectations and behaves appropriately.

His experience in custody in terms of psychological support since the learned magistrate sentencing though, that support again through no fault of D's is markedly different to the support he was receiving prior to the magistrate sentencing.

Page 7 of the report it records that D has been seen on eight occasions for risk assessment and on another occasion for counselling means, which is when he was assessed as unsuitable for individual counselling, which Ms Salsano followed up and to which I've already referred and she has provided the court with additional information and I've now read the email. But of more moment, the report goes on:

> Contact with D was unable to be facilitated on a further four occasions due to staff shortages and operational restrictions impacting on movements throughout the centre. D's acknowledged difficulties managing rolling lockdowns and extended time in cell and has subsequently engaged in externalising behaviours, eg, property damage and absconding, those out-of-bounds type incidents I've referred to already.
>
> D's behaviour is reflective of his cognitive impairments, young age and impulsivity and he has been open to developing strategies to better manage his behaviour.

Goes on further:

> He has been engaged well during contacts with psychology and has requested regular support to assist with his coping.

The problem is that he's not getting that support now on a reliable and regular basis. And the psychologists clearly recognise and make the link in that report between D's behaviour in terms of damage and absconding, which is a reaction to the conditions under which he has been incarcerated and his difficulty managing lengthy periods of lockdown.

I'm not going to go through what can fairly be described as deteriorating behaviour resulting in periods in the ISU through the end of June, but he has spent significantly more time in the ISU more recently, 21 June, 22 June, 23, 24, 25, 26, 27, 28, 29, 30 June. 1, 2, 3, 4 and 5 July and then a break until 18 July, significant periods in the ISU, being punishment for behaviour which is recorded in the report. I want to deal with though particularly one week.

D appeared before me on 12 July, last week. And I told him to behave for a week and see if he could stay out of the ISU. Now, that same day, 12 July, he was locked down for five hours and 35 minutes. Now, I'm not going to go through all the lockdown hours, but that five hours and 35 minutes, bearing in mind is in addition to the usual night time lockdown. And as the report says:

> Daily unlock hours for the facilitation for standard daily program is 9.8 hours six days a week.

And then the lockdown hours, which are recorded in the report provided to me are against an 11 hour, 15 minute

day. Efforts are being made to have this rectified. But it's really against the 9.8 hour facilitation of the standard daily program which I'm concerned about. So against that 9.8 hours, on 12 July he's, in fact, locked down to five hours and 35 minutes. On 13 July, zero hours and 40 minutes, so in fact, a pretty good day in the centre comparatively.

Then on 14 July we've got lockdown starting to go up again, four hours, 35 minutes. On 15 July, six hours, 55 minutes. On 16 July, nine hours and 15 minutes. And on 17 July, 10 hours and 40 minutes. Those lockdowns of 10 hours-plus are not unusual. On 15 June and 16 June there were lockdowns of more than 10 hours on each of those days.

And going back to the earlier detention management report, which Ms Salsano went through, again there are examples of those sort of rolling lockdowns. The explanation for those lockdowns are that:

> The above lockdowns –

and this is on page 8 of the report:

> The above lockdowns relate to periods where there were significant staff shortages and operational demands, including response to incidents. Whilst these lockdowns were unavoidable, the department has undertaken urgent action to address the staffing shortfalls.

I've been reading that for nine months in the context of other reports. Now, I got to 17 July, 10 hours, 40 minutes of lockdown. We turn then back to the behaviour reports in the ISU. On 16 July there's an out-of-bounds incident. Not much information recorded there. In fact, it says outcome is not available, but:

> Detainee, property damage, out of cell.

So this is four days after I told him to behave himself, but in circumstances where on 16 July, this boy with ADHD is locked down for nine hours and 15 minutes in addition to his night time lockdown. Also on 16 July, unsurprisingly, given that lockdown, we've got a self-harm threat. And on 17 July, when he's subject to a 10 hour, 40 minute lockdown, another self-harm threat.

And then, best I can see from the report, because he's threatening self-harm, he goes into the intensive supervision unit on 18 July for 360 minutes. Over the last

month in relation to his participation in programs, the report starts on page 6 that:

> During the period covered in the updated report D has engaged in the following.

Reference to a program called Do It Easy. Explains what the program is and then it says:

> Was listed to attend on 16 June, but the program was cancelled by the centre.

So in fact, he didn't participate in that program through no fault of his own. Next program, Be Solid, two-session program focusing on mental health and resilience awareness. Cancelled due to operational reasons on 5 May. Cancelled due to operational reasons on 2 June. So again, through no fault of D's, he didn't, in fact, participate in that program at all.

He did participate in the football program and D loves football, so he got to do the Stephen Michael football program on 28 April and on 16 June. It was cancelled on 5 May, 12 May, 17 May and 24 May. The basketball program seems to run on a weekly basis and only one date is cancelled, which is 25 May. It certainly doesn't seem though, having regard to the lockdown hours, where there have been days of lengthy lockdown that he could have participated in basketball on those 10 nine-hour days.

So it's clear that apart from football and basketball, through no fault of his own, D has not been able to participate in programs over the last few months of his detention. I accept what Ms Salsano says and which she said to the learned magistrate about D not having family visits, limited contact, both because of lockdown, but also because they are all in Carnarvon.

In conclusion, D's experience of detention, especially over the last month, has been harsh, punitive and of no rehabilitative effect. Of greater concern, that is the second time this week that I have come to that conclusion in sentencing a young Aboriginal child at Banksia Hill. The conditions of D's detention have not met the minimum standards the community and court expects and the law requires.

I'm satisfied that D's deteriorating behaviour in detention is directly linked to the conditions of his detention, the lengthy lockdowns he has been subject to, the failure to provide him with psychological care,

education programs, stimulation and consistent support. I am not satisfied that if I sentence D to further immediate detention there will be any substantive change in the conditions of his detention.

I'm not satisfied that his rehabilitation will be advanced. D's experience of detention to date is a very significant mitigating factor. I turn then to the section 189 application which is made by Ms Salsano. If special circumstances exist, the court may declare that the conviction is not to be regarded as a conviction for any purpose, even though two years has not expired.

That consideration involves the exercise of judicial discretion. As to special circumstances, the court is guided by the decision of then Strk AJ in Edgar, paragraphs 133 and following. The relevant considerations are D's age, maturity, cultural background and other factors, of course, may also be relevant. The onus is on D to establish that special circumstances exist on the balance of probabilities.

I take a liberal definition to what might be special circumstances, but very much within the statutory context of section 189. And having regard also to the fundamental principles of juvenile justice in the Young Offenders Act, given that this application is made and properly so in the context of a sentencing exercise. In relation to D, having regard to the factors which I consider to be important, D is 13 and still very young.

He was 11 at the time of his first home burglary offences which I'm to consider. His maturity is less than that of similar aged peers because of his damaged cognitive function. His personal and cultural circumstances I've already referred to. He comes from a deprived background, a dysfunctional family and has a substantial history of trauma.

His cognitive impairments, especially his ADHD, impulsivity, his lack of consequential thinking, problems with his memory for rules and difficulties with language are important considerations. He has now been in custody for a lengthy period of time and it has been of no rehabilitative effect. I'm satisfied in all of those circumstances that special circumstances do exist for all of the home burglaries on D's record, except for the charges 291 and 2093, which are the most recent offences he has committed.

The age of the offences and the age of convictions is a relevant consideration as well as D's younger age at the time of committing those earlier offences. The age of convictions is a relevant consideration expressly so having regard to the whole statutory scheme in section 189, where ordinarily convictions after completion of two years on an order or two years after the expiry of the order those convictions would be expunged.

291 and 2093 are more recent. They are serious. They are committed whilst D was on a conditional release order and also, as I say, in breach of bail. So those two convictions, 291 and 2093, will carry forward as a strike, but there will be a declaration in relation to all of those other home burglaries. They are, in the words of section 189, subsection (2), not to be regarded as convictions for any purpose.

Having dealt with the section 189 application and review, it's then necessary to now move to sentencing D for all of these matters. I've identified the mitigating factors, his plea of guilty, some minimal cooperation, Ms De Zilwa was right to point out on some matters, but not on others. The background of family dysfunction, considerations arising from Churnside, which means he's a poor vehicle for general deterrence.

Personal deterrence has been served already by reason of his experience of detention. The principles of juvenile justice are fundamental. And as I said right at the start, D is a very young age. The importance of rehabilitating him, which is in the community's best interests and his best interests dictate that we must persist with continuing to try and rehabilitate D. The plan that is in place is one that I've considered closely and which holds promise given Ms W's preparedness to continue to assist her grandson.

D's experience of detention, as I have already said, is substantially mitigatory. Turning then to sentencing, I will cancel the conditional release order of 10 January 2022. I impose the following sentences. In relation to charge – I'm just going to read out the charge numbers – 21, it will be a sentence of one month in detention. 74, one month detention. 328, one month detention. 330, one month detention.

367, one month detention. 382, one month detention. 473, one month detention. 475, one month detention. 477, one month detention. 479, one month detention. 481, one

month detention. 483, one month detention. 490, one month detention. 492, one month detention. 493, one month detention. 494, one month detention. 496, one month detention. 519, three months detention. 520, one month detention. 205, one month detention.

213, one month detention. 3028, one month detention. 818, one month detention. 915, two months detention. 2090, two months detention. 2091, one month detention. 2094, one month detention. 175, one month detention. 177, one month detention. 190, one month detention. All of those sentences of detention are to be served concurrently with each other. The total sentence of detention therefore is one of three months detention. That sentence of detention will be backdated to – Ms Anderson?

ANDERSON, MS: The correct backdate, your Honour, was – I'm sorry, just bear with me for a moment – 11 April.

HIS HONOUR: Those sentences will be backdated to 11 April 2022. It follows that those sentences of detention have been completely served and expired on 10 July of this year and D is not liable to serve any further detention in respect of those matters. There remains then the charges to which he pleaded guilty this morning, charges 291 and 2093. As I say, those matters were serious. It's my view that the only appropriate sentence in respect of them is a sentence of detention.

In relation to 291, the home burglary in relation to Ms Hayes, the appropriate sentence is one of four months detention. In relation to 2093, the burglary with intent on a dwelling, it will be two months detention. Both of those sentences are to be served concurrently with each other and they are not sentences I've concluded ultimately which should be immediately served.

Rather, they should be a sentence of detention in the community and subject to a four-month conditional release order with conditions in the agenda which is attached to the Youth Justice report, including supervision, psychological and substance abuse counselling in terms of the attendance. That conditional release order will take effect from today. Are there any other orders required from Youth Justice's perspective, Ms Anderson?

ANDERSON, MS: No, your Honour.

HIS HONOUR: Counsel?

SALSANO, MS: Your Honour, the only thing I was going to seek is that a copy of the multidisciplinary report, that your Honour grant leave for that report to be released to the National Disability Insurance Scheme if D is eligible for that.

HIS HONOUR: Yes.

SALSANO, MS: Also he can make that application.

HIS HONOUR: I will order the release of the - - -

ANDERSON, MS: Yes, your Honour. Just make it on condition that Youth Justice release it.

HIS HONOUR: Yes.

ANDERSON, MS: Thank you.

HIS HONOUR: I will allow and authorise the release of that report for that purpose, but through Youth Justice, Ms Salsano.

SALSANO, MS: Yes, your Honour.

HIS HONOUR: Not to be provided by you or ALS directly.

SALSANO, MS: Yes, your Honour.

HIS HONOUR: Any matters from the State's perspective?

DE ZILWA, MS: Can I just clarify, your Honour, when you were giving the section 9AA discount, you referred to 2090, but there wasn't a reference to the other matters that were for first – sorry? That were associated - - -

HIS HONOUR: Are they before me for review?

DE ZILWA, MS: Yes, your Honour.

HIS HONOUR: Which ones?

DE ZILWA, MS: So 818, 915, 2091 and 2094. When D was sentenced by the learned magistrate, those were the first sentencing exercise for those charges, so I just wanted to clarify if the 25 per cent - - -

HIS HONOUR: All right. Well, thank you for bringing that to my attention. I missed that. I thought that they were the subject of the earlier one. But they were also pleas at the earliest opportunity. Insofar as it's necessary,

therefore, they should attract a 25 per cent discount, which is well and truly what they got. If there's nothing outstanding, Ms Salsano, now for D?

SALSANO, MS: Your Honour, just that he had a section 19B disclosure date tomorrow in the combined court list. I can either have a colleague appear and request it be struck off the list or if it could be vacated today.

HIS HONOUR: No, we will vacate it today because the matter has been dealt with.

SALSANO, MS: Thank you, your Honour.

HIS HONOUR: Yes. So that will be vacated.

SALSANO, MS: Thank you, your Honour.

HIS HONOUR: That completes all matters. D, you've been very good listening all afternoon. Right. I just want to tell you what that means. All right. I'm letting you out of Banksia today. You can go back to Carnarvon to stay with your grandma.

W, MR: Yes.

HIS HONOUR: You understand that? You've done enough time in Banksia. But you're not walking scot-free. You've got a sentence of detention of four months hanging over your head from today.

W, MR: Yes.

HIS HONOUR: All right. You commit any more burglaries or stealings when you go back to Carnarvon or steal any cars, what's going to happen?

W, MR: (indistinct)

HIS HONOUR: Yes. Do you want to go back to Banksia?

W, MR: No.

HIS HONOUR: No. Well, you've learnt your lesson now, haven't you?

W, MR: Yes.

HIS HONOUR: It's pretty simple. Don't do burglaries. Don't steal cars. Don't get into trouble and you don't come back to Banksia.

W, MR: Yes.

HIS HONOUR: You've also got to do what your Youth Justice officer says for the next four months. Right. They're there to help your grandmother and help you. Okay.

W, MR: Yes.

HIS HONOUR: And don't give her a hard time. You've given her a really hard time in the past. She's trying to do her best. You got that?

W, MR: Yes.

HIS HONOUR: Are you prepared to be on a conditional release order for another four months?

W, MR: Yes.

HIS HONOUR: You are. You're going to work with Youth Justice?

W, MR: Yes.

HIS HONOUR: All right. Have you got any questions for me?

W, MR: No.

HIS HONOUR: No. Thank you, counsel.

AT 5.36 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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