

Mr Jackson, the defendant, has pleaded guilty to one count of wounding. The crime was committed at about 11.45pm on 9 March 2019. The complainant is Matthew Smith. Both the defendant and the complainant were in a hotel in New Norfolk; the defendant with family and friends, the complainant with a friend of his. The two groups were separate, although both groups had been at a different hotel earlier in the evening. The incident was captured on CCTV. Mr Smith is seen chatting with other people in a corner of the bar. He is facing towards the corner. The defendant is close behind him, generally facing towards the corner. The defendant turns away to his right and is seen to rotate an empty beer glass in his hands for approximately 20 seconds while talking to two other people. He then turned around back towards Mr Smith, tapped him on the arm and said "Matthew". As Mr Smith turned towards the defendant, the defendant struck him to the left side of the face with the glass. The blow caused the glass to shatter, the impact pushed Mr Smith towards the wall. His face immediately began to bleed. The defendant then attempted to punch Mr Smith a number of times but was restrained by other patrons. He continued to struggle and was aggressive to both Mr Smith and others, at one point throwing a handbag at Mr Smith. Those matters demonstrate the level of aggression. The defendant was ultimately restrained and evicted. Police were called to the scene and the defendant was found outside the hotel. When interviewed he said that he had been at the first hotel from around 6pm with his father and uncle, and Mr Smith and his friends were there. Mr Smith and his friends were trying to start a fight with them. They left to go to the next hotel and Mr Smith and his group followed. The defendant said that at the second hotel, Mr Smith kept sending his friend over. The friend was saying that "when the pub shuts Matthew Smith is going to punch you to death". The defendant told police he had been told that Mr Smith had hit another person over the head with a stool over a game of 8-ball. He was scared but did not make any attempt to get help. He admitted he had had a fair bit to drink, and had no recollection of what had happened until his father told him. The Crown accepts that there was some sort of verbal altercation between the two groups at the first hotel. The Crown accepts that the defendant believed Mr Smith had made threats, but does not accept that he in fact did so. Nor does the Crown accept that the defendant was provoked in any way. That is accepted by the defendant. Mr Smith sustained a laceration approximately 5 centimetres long to his lower cheek/jaw area. He was taken to hospital by ambulance where he had surgery the following day with the wound being stitched internally and externally, and glass fragments removed from his face. I have photographs of the wound. Although in the photographs Mr Smith has a beard, the wound is quite noticeable. It is a roughly vertical scar a short distance away from the angle of his left jaw. I have a victim impact statement dated 1 October 2019. He says he is self-conscious about the scar; he feels as though people are always looking at it and it is a concern relating to future employment. It still causes him discomfort. He could not go to work the following week and had to take sick leave. He says he has always been an outgoing person but since the incident he finds it hard to socialise when there are people he does not know. He finds it hard to relax and enjoy the company of others because of this fear. He was seeking professional help to find ways of dealing with his anxiety which causes him mood swings, which in turn cause his family to suffer.

The defendant was then 23 years old; now 24. He has convictions for firearms offences in July 2015 and again in January 2016 for which he was fined on each occasion. The offences appear to be related; the first involving possession of firearm; the second, ammunition for that firearm which he had overlooked. I have pre-sentence reports dated 5 February and 3 April 2020, and a psychiatric report from Dr Colquhoun of the Forensic Mental Health Service dated

25 February 2020. The defendant lives on a farming property with his parents, siblings and a partner of some two years. He has two young children from a relationship which ended some time ago. He left school in grade 9 and has been employed in the logging industry continually since then; a period of about seven years. Accordingly, he has a good industrial record. He has a modest income and a number of debts which were accrued in relation to the proposed construction of a house. He was suspended for fighting during his school years. He experiences ongoing issues with reading and writing. The defendant admits to having chronic problems with anger and it is clear he has mental health issues, although there is some disagreement about the diagnoses. He was treated for ADHD as a child and stopped taking the medication when he was 15. In December last year he saw a psychiatrist, Dr Litjens, who diagnosed him as having an adult form of ADHD, a generalised anxiety disorder, major depressive disorder and PTSD. The latter is said to result from the death of his uncle who died by drowning when the defendant was 14, and to whom he was close. Although he was not present at the time of the death, the defendant apparently suffers nightmares in which he is trying to save his uncle. I do not have a report from Dr Litjens. The pre-sentence reports reveal that when he saw Dr Litjens, she advised the defendant to see a psychologist and to make follow-up appointments with her. He has done neither. Dr Colquhoun has a different view than Dr Litjens. She says the defendant does not have a major mental illness, but does suffer from a mild depressive disorder; that is, chronic ongoing mild depression. His symptoms do not cause functional impairment and he has no thoughts of self-harm. There was a suicide attempt some months ago but this was an impulsive decision made without any antecedent or persistent thoughts of self-harm. She says the defendant is presently not experiencing symptoms suggestive of ADHD, although it is not uncommon for persons with such conditions in adolescence to have high levels of impulsivity in adulthood, compared to the average individual. That of course seems to have some relevance in relation to the present matter. Dr Colquhoun says he has a collection of personality traits which predisposes him to being more impulsive, promiscuous, deviant and violent than the average person. This involves a tendency to have less regard to the welfare of others and reduced remorse. The history is not suggestive of PTSD. The ADHD suffered in childhood predisposes him to increased levels of impulsivity, as I have noted. He has poor social skills and difficulty in relationships. Dr Colquhoun's conclusion though is the defendant is not and was not suffering from impaired mental functioning, and so the *Verdins* principles have no application. Dr Colquhoun is of the opinion that there are risk factors for future violent behaviour but that the risk is low to moderate provided the defendant engages in remedial strategies. As I have said, I have no report from Dr Litjens; but counsel does not press the *Verdins* issue on behalf of the defendant. In the absence of material proving impaired mental functioning causative of the offending, mental health issues are, however, still relevant background and I take them into account. Approaching things on that basis, I am prepared to proceed, assuming that the depression is more than mild and more in accordance with what Dr Litjens says, and that there are symptoms of PTSD as well.

Community Corrections has determined that the defendant is not suitable for home detention or community service, but is suitable for probation. As to the offending, I am told that Mr Smith is the brother-in-law of the defendant's deceased uncle. Apparently some words were exchanged between Mr Smith and the defendant and his family members at the uncle's funeral due to ongoing problematic family dynamics. This situation still existed at the time of the offending. It seems that in order to avoid Mr Smith the defendant and his group left the first hotel to go to the second. Mr Smith followed, although that may have been nothing more than that the first hotel closed. The defendant has told the probation officer that he accepts full responsibility for his actions and feels disappointed in them. Although he said that Mr Smith did not deserve to be hit with the glass, he maintained the view that Mr Smith deserved some

form of retribution for his actions at the funeral. It is common ground that I sentence this defendant on the basis that the wound was recklessly caused and not intentionally caused. I take into account the plea of guilty which was entered at an early stage of the proceedings. That plea has practical value and shows some willingness to facilitate the course of justice. Having said that, I am told the defendant is remorseful although I note that there is no real evidence of true remorse and there has been some lack of co-operation or at least openness with Community Corrections. As of today though, he now seems more willing to co-operate.

Mr Jackson, drunken violence in and around licensed premises needs to be utterly condemned. So too is the resort to violence to settle grievances, real or perceived. These things are matters of considerable community concern. Striking someone in the face with a glass is an act fraught with risk. It can result in severing of major blood vessels which could cause serious injury or death, or the loss of sight. It is most fortunate that Mr Smith did not suffer more serious injury. Your conduct was cowardly and disgraceful. Basically, you struck Mr Smith from behind with little warning, giving him no real opportunity to defend himself. This was not an immediate impulsive reaction, although not premeditated at length. It was, as noted, unprovoked. Intoxication provides no excuse at all. I take into account your plea of guilty, and your age and personal circumstances, including your mental health issues and lack of relevant prior convictions. I have decided that the public interest is better served at this point in time by you remaining in the community. However should you commit this type of offence again you can probably rest assured you will go to gaol. You are convicted and sentenced to 10 months' imprisonment the execution of which is wholly suspended on condition you commit no offence punishable by imprisonment for a period of two years. I consider it appropriate that part of the sentence that has a more immediate impact. Community service is not a real option, but a fine, taking into account your difficult financial circumstances, is an option, and you will be fined the sum of \$750 which you will have to pay within 28 days. In addition, I make a community correction order for 18 months. Special conditions of that order are that you submit to the supervision of a probation officer as required; that you attend educational and other programs as directed by a probation; that you undergo assessment and treatment for alcohol dependency as directed by a probation officer; and you submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer. You will have to report to a probation officer at 114 Bathurst Street by 5pm tomorrow. Mr Jackson, I need to explain to you that if you do commit an offence punishable by imprisonment, as well as being dealt with for that offence, you can be brought back to this Court and an application made that you serve the suspended term of imprisonment. The law is that a judge has to activate that sentence unless it is unjust. I warn you that the expression "any offence punishable by imprisonment" is to be read literally. It means exactly that. There are many offences which are punishable by imprisonment, and it extends to such things as drink driving offences. So you will need to bear that in mind.