

STATE OF TASMANIA v JOSHUA DION HILL
COMMENTS ON PASSING SENTENCE

15 MAY 2020
PEARCE J

Joshua Hill, you plead guilty to assault. I also agreed to deal with your plea of guilty to the related summary charge of common assault. At about 4 am on 23 June 2019 you were at a night club in central Hobart. You were 25. You got into an argument with another young man you did not know. He was aged 20. You pushed him to his knees. That is the common assault. You agreed to go downstairs and outside to "sort it out." However as the complainant reached the top of the stairs you, using both your hands, pushed his chest. The force of the push propelled him down the stairs to the ground at the foot of the stairs without his feet touching the ground and without anything breaking his fall. On striking the ground he was immediately rendered unconscious. It was about five minutes before he regained consciousness. He was then taken by ambulance to the hospital.

The complainant was treated for concussion, for a laceration to the left side of his head which required four staples to close, and for grazing and bruising to his knee and arm.

You were identified through the police investigation and interviewed two days later. You admitted pushing the complainant and said it was because you were sick of him "mouthing off." However you claimed that you were intoxicated, did not intentionally push him down the stairs, and pushed him without thinking what may happen.

You are now aged 26. You left school at age 15 but you have always been gainfully employed, mostly in manual and labouring positions. You hold certificates of competency in a number of areas. You are not presently working due to a work injury suffered in September 2018 when you broke your ankle. You have two children aged 4 and 2 who you share care of. You have an older child but you are not presently permitted contact by your former partner. Your criminal history is of some concern. You have four prior convictions for common assault. The first occurred when you were 16 and the most recent when you were 19. It seems however that the offences in each case were serious because they all resulted in sentences of detention or imprisonment, although for short periods and all wholly suspended. There have been no offences of violence since then, until this one.

This is yet another example of alcohol fuelled violent behaviour by a young man late at night in a licensed establishment. The violence was not spontaneous because you were on the way to fight. I was shown the CCTV recording of the push. The victim was standing with his back to the top of a set of eight steep stairs facing not only you but also two or three of your friends. Even if he said something to annoy you, he posed no physical threat and he was badly outnumbered. You pushed him so hard that he was propelled through the air directly to the floor below. It is confronting to watch. It is fortunate for you and the complainant that he was not even more badly injured. There is no victim impact statement and it was not asserted that he has any long term effects. You claim that, although you obviously intentionally pushed him hard, you did not intend that he be propelled down the stairs or badly injured. If such intention were proved you would be guilty of a more serious crime. However, the potentially tragic consequences of what you did are obvious to any reasonable person. You cannot claim that your intoxication caused you to act in any way which is out of character and it is not mitigating.

Given your record, and the nature of this offence, a sentence is required which not only punishes you, but deters you and others from offending of this nature. I have decided to

impose a home detention order. You have been assessed as suitable for such an order. I would otherwise have sent you to prison. Your crime is a violent offence but it is not my opinion that, if you are subject to the order, you pose a significant ongoing risk of violence during the operational period of the order. Although a home detention order is less onerous and punitive than prison, it is still a significant restriction on your liberty and freedom of movement. You will be required to comply with onerous conditions. A home detention order may be for a maximum period of 18 months. I think that, in your case, 8 months is the appropriate period.

Joshua Hill, you are convicted on complaint 6631/2019, Code assault, and on complaint 6632/2019, common assault. I impose one sentence. I make a home detention order. The operative period of the order is 8 months from today. I specify the premises at which you are to reside during the operational period of the order [address]. I order that immediately upon your leaving court you report to the office of Community Corrections at 3 Terry Street, Glenorchy, for induction into this order, and an explanation as to its full terms. The order will be subject to all of the core conditions set out in the *Sentencing Act* 1997, s 42AD(1). They will be set out in the order that you will be given, but include that you will submit to electronic monitoring and must, during the operational period of the order, if directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of an illicit drug. I specify that you must be at the home detention premises at all times unless for a relevant reason. In short, that means that you must be at those premises unless there is a need for urgent medical treatment, there is a serious risk of death or injury, or you already have the approval of a probation officer to be absent. It will be for the probation officer to determine what to approve so as to allow for employment, rehabilitation courses, contact with your children, or for any other purpose. The conditions will include that you not commit another offence punishable by imprisonment and that you comply with all directions given to you by your probation officer. I impose special conditions that, during the operational period of the order:

- you must submit to the supervision of a probation officer as required by that officer;
- you must not use any illicit or prohibited substances, which in this order is defined to include any controlled drug as defined by the *Misuse of Drugs Act* 2001, and any medication containing an opiate, benzodiazepine, bupropion, hydrochloride or pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication;
- you must submit to a medical, psychological, psychiatric or physical or mental health assessment or treatment as directed by a probation officer;
- you must not consume alcohol;
- you must, if directed to do so by a police officer or probation officer, submit to a breath test, urine test, oral fluid test, blood test or other test for the presence of alcohol or illicit or prohibited substance;
- you must maintain an active mobile phone service, provide the contact details to Community Corrections and be contactable by means of that phone at all times.

Mr Hill, this order comes into effect immediately. You must understand that if you do not comply with the conditions, imprisonment is likely. If you breach the order by committing another offence, the order must be cancelled unless there are exceptional circumstances, and in that case imprisonment would be highly likely.