

Eric Ungerhofer, pleads guilty to *Criminal Code* assault. I also agreed to deal with his plea of guilty to the summary charge of common assault. The offences were committed on 11 January 2019 when he was an inmate of the maximum security section at Risdon Prison. The section of the prison in which he was housed consists of a central common area surrounded by single cells. Just after 8.30 am on that day, the complainant, one of the defendant's fellow inmates, was sitting in the common area. He is a man who is obese, has a mild disability and borderline intellectual functioning. He was sitting on his own, well away from the defendant. The defendant went to the kitchenette and filled a large plastic container with hot water from an urn available to allow prisoners to make hot drinks. He walked across the common area to within a metre of the complainant and threw the water over his face and neck. That is the Code assault. As the complainant stood up and walked away after being struck with the water, the defendant ran after him and punched him once to the back of his head with his closed fist. That is the common assault.

As a result of the water being thrown on him, the complainant suffered burns to his right cheek, right ear and the right side of his neck. It was necessary to shave some of his beard so he could be treated with cream and burn dressings. The burns have healed but he will be left with some permanent residual scarring, mostly on his neck but also on his face. But for his long hair, glasses and beard the burns may have been extremely serious.

The defendant was identified by the complainant and from CCTV but made no admissions when interviewed. The crime may have been an opportunistic one, but it was not spontaneous because he had previously threatened the complainant with violence if he came out of his cell because he was imprisoned for child sex offences. He was an easy target and vulnerable to a cowardly attack like this one. It was a nasty assault and the consequences could have been even worse. Violence of this nature undermines prison order and authority.

The defendant was 22 when this crime was committed. He pleaded guilty, but it was not an early plea and entered only after the State was advised that a trial would be required and the matter was prepared accordingly. As an adult he has a poor record for violence, including six convictions for assault, property offences, dishonesty and anti-authority type offences. On 18 January 2017 a four month suspended sentence was activated from 21 December 2016, and he was sentenced to a cumulative term of eight months for numerous summary offences. On 3 March 2017, while he was in prison, he engaged in a standoff during which he caused about \$130,000 worth of damage to property. That crime was in breach of a suspended two month sentence which was activated from 20 December 2017, and he was sentenced to a cumulative term of 18 months with a non-parole period of 10 months. On 19 October 2017, while in prison, he assaulted a man by throwing a cup of urine over him. On 19 March 2018, in prison, he assaulted another prisoner by throwing hot water on him and punching him. For each of those two assaults he was sentenced to imprisonment for a month to be served concurrently with the sentences he was serving, even though they were prison offences within the meaning of that term in the *Sentencing Act* and the *Corrections Act*. There are two main observations to make. The first is that the defendant has been in prison for much of the period since 21 December 2016. He was released on 19 August 2019 but was arrested on 23 October 2019 for breaching bail and has been in custody since then. The second observation is that the sentences which have been imposed on the defendant so far, or the possibility of release if he behaves well, have not been enough to stop the defendant from committing offences while in

custody. The explanation for this may appear in the report prepared in January 2018 by Matthew Wade, then a clinical psychology registrar at Community Forensic Mental Health Services, and in the pre-sentence report I obtained from Community Corrections. The defendant had a stable upbringing and caring parents who are as supportive as they can be. However, since childhood the defendant has displayed delayed development, behavioural problems and poor impulse control, leading to illicit substance abuse. He is cognitively immature and vulnerable to negative influences, and frequently resorts to aggression, destructive behaviour and even self-harm to meet his own ends. Mr Wade's report is consistent with the submission of the defendant's counsel that this crime was likely motivated by boredom, attention seeking and the wish to impress others. In the past the defendant has seemingly taken pleasure in the results of his criminal conduct. In short, Mr Wade reports that although the defendant's symptoms are not sufficiently severe to warrant a finding of mental illness or mood disorder, his intellectual functioning is in the borderline range. If there is any chance of him successfully re-integrating into the community he requires structured rehabilitative mental health measures. The high level of intervention he will require on his release is confirmed by the comprehensive and helpful pre-sentence report. History demonstrates that prison is unlikely to deter or rehabilitate him. On the other hand, protection of the public looms as an important sentencing objective. I will allow eligibility for parole but not until he has served the minimum term justice requires for punishment, denunciation, vindication of the victim and specific and general deterrence.

Eric Ungerhofer, you are sentenced to imprisonment for 16 months from 23 October 2019. I order that you not be eligible for parole until you have served 11 months of that sentence. I make a community corrections order for a period of 24 months from your release. The core conditions of that order will be specified in the order you will be given and include that you not commit an offence punishable by imprisonment, that you report to and comply with the directions of a probation officer, that you must not leave Tasmania without permission and that you must notify of any change of address. I impose a special condition that you must, during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer. If you breach any of those conditions you may be brought back to court and re-sentenced.