

STATE OF TASMANIA v DYLAN JAMES SHAW
COMMENTS ON PASSING SENTENCE

WOOD J
12 JUNE 2020

Dylan James Shaw has pleaded guilty to one count of assault contrary to the *Criminal Code*, and summary offences involving four counts of destroy property and one count of use a controlled drug.

On 8 December 2019, the defendant, Mr Shaw, assaulted his partner Tayla Lee Margaret Porter, during a period of brief reconciliation. They had previously been in a relationship for about two years at a time when they both lived in Queensland. It had not been a stable relationship, and they spent periods of time living apart. Their relationship ended and the complainant returned to Tasmania to live and gave birth to their child in August 2018. The defendant continued to reside in Queensland but they kept in contact. Then the complainant invited the defendant to Tasmania to spend Christmas with her and their son. It was be a trial period to see if their relationship might work. The defendant travelled to Tasmania on 29 November 2019 and stayed with the complainant and their son at the complainant's residence, a unit in Devonport.

Early on the morning of 8 December 2019, the defendant and the complainant were in bed when they were woken by their child, aged 15 months. They argued over whose turn it was to settle the infant. The complainant hit the defendant with a pillow and then picked up the child and put him in bed with them. The defendant criticised her for not buying milk for their child. The complainant suffers crippling anxiety and finds it difficult at times to leave the house. She responded by tapping him on the head, not very forcefully. The defendant responded by slapping her to the face, striking her face with the palm of his hand and getting on top of her and placing his hand around her throat. He strangled her to the point where she could not breathe. She began to black out and thought she was going to die. At one point the complainant tried to scream for help and the defendant told her to "stop screaming and making noise" and that "it's your fault I'm doing this and I'm going to do this again". She tried to get up, and in the ensuing struggle, her back was injured when it hit the bedhead. She begged the defendant to stop and he told her that "she had pushed" him to do it. The entire assault was committed in the presence of the child.

The complainant tried to pacify the defendant by agreeing it was her fault, this angered him and he poured a fizzy drink on her.

Shortly afterwards the complainant left the house with the child and approached a neighbour. The defendant asked her to return to the unit but she refused. Later the complainant returned to her unit with a friend. The defendant was out and when he returned, she refused him entry.

The defendant went to the police station in Devonport and admitted his conduct in choking the complainant. He told police that the complainant had punched him three times to the side of the face and screamed at him, and he grabbed her by the throat with one hand. He admitted he grabbed her hard enough to cut off her breathing. The defendant said he did that to stop her screaming. He said she screams at him when she is talking to him. He acknowledged the disparity in their size, saying "I'm 80 kilos, she's 50 kilos. I have a lot more ability to hurt her

than she does me." He said that when he choked her he could see in her eyes that she was petrified. He said that because of what he had done, he had tried to cut himself because "she doesn't deserve it. I need to be stronger and not retaliate."

As stated earlier, the complainant did strike the defendant before he assaulted her, but not, as he asserted, by punching him three times.

Police officers attended the complainant at her unit. The defendant had damaged the unit and some of her property, a mobile phone, television and recklessly damaged a microwave. This damage had been caused during verbal arguments in the days before the assault.

Police officers observed the complainant had visible marks on her neck and face attributed to the assault. These injuries are visible in photographs taken by the police. She had marks and soreness to her throat, right cheek and a scratch on her back and was sore below her left collarbone.

The complainant describes how the assault has affected her in a victim impact statement. Before the assault she suffered from depression and anxiety, and, as I have mentioned, had difficulties at times leaving her house. That condition has worsened. She hardly leaves her house now and when she does, it is only for short periods and she experiences panic attacks. She is now consulting a psychiatrist. She has been diagnosed with post-traumatic stress disorder and the assault is considered to be a significant contributing factor. The damage to her property which she cannot afford to replace serves as a reminder of the incident. Her child has been removed from her care and placed with her mother. Evidently, the assault was a deciding factor. The complainant feels that her son has been affected by witnessing the incident.

At a court appearance on 3 February 2020, the defendant's counsel indicated to the Crown that a plea of guilty was likely. He has entered a plea of guilty at an early stage. This factor will be reflected in the sentence.

The defendant is aged 24 years. He has prior convictions for offending in Queensland. He has convictions for three counts of rape committed on a single date in May 2014. He was sentenced to a total period of two years' imprisonment, the balance after serving four months was suspended. He has convictions for possession of drugs and was subject to probation for 6 months last year. He has a prior offence for a contravention of a domestic violence order in 2015 and received a release without conviction order.

Aggravating factors of this assault are that a child was present and witnessed this act of violence upon his mother by his father, which is highly likely to be very disturbing emotionally and psychologically. Also, the assault was carried out in the context of a relationship, by someone the complainant was entitled to feel safe with.

Strangulation is a very serious type of assault. It is an inherently dangerous act that may give rise to internal injuries, affecting long-term health or it may lead to death. It is also well known that it can have devastating psychological long-term effects on its victims.

I take into account that, distinguishing this case from some other cases that come before the courts, this was not typical behaviour or an example of behaviour by a perpetrator who was physically or emotionally abusive and dominating. Rather the relationship was one that had become unhealthy, with both parties contributing to the difficulties. Both the complainant and the defendant were users of methylamphetamine and this was a significant contributing factor to the difficulties. It was a feature of their relationship that both parties were verbally abusive to one another, engaged in low level violence and dysfunctional ways of communicating. Both parties from time to time felt oppressed by the conduct of the other. The defendant's medical conditions meant that he was sensitive to aggression or raised voices and he would feel stressed when the complainant communicated with him in that way.

Mr Shaw suffers from attention deficit disorder and attention deficit hyperactivity disorder and at a young age was diagnosed with autism. His father was violent and abusive, creating a traumatic environment for the defendant during his childhood and adolescence. He was physically and sexually abused by his father during his formative years. His father was a heavy drug user and provided him with cannabis and methylamphetamine in his early to mid-teenage years, and drugs became an escape mechanism. The defendant's home life was punctuated with serious acts of violence by his father upon his mother most commonly involving strangulation. His father's violence has had a very significant impact upon him.

He is educated to grade 10 and has a history of employment in unskilled work. His attempt to complete an electrical apprenticeship suffered due to a deterioration in his mental health. He suffered a number of suicide attempts and has been admitted a number of times to treatment facilities in Queensland. His mental health was particularly poor after he was charged with rape when he was 18, and in the period while he was waiting for it to resolve some 2-3 years later. He had a mental breakdown when he was 19 years old and was hospitalised in a psychiatric ward when was 20 after a suicide attempt. His consumption of illicit substances increased significantly over the three year period. By 19 years of age, the defendant's drug addiction was extremely serious.

At the time of the crime, both the complainant and the defendant were withdrawing from methylamphetamine, having used it some three days earlier. He retaliated in anger when the complainant struck him. After he committed the assault, he immediately realised the magnitude of what he had done to the complainant, and that he had exposed his son to the same behaviour he had been exposed to when he was young. This triggered an intense feeling of regret and he was horrified by what he had done. He went to the police station of his own volition and handed himself in, demonstrating his remorse. His admissions reveal an understanding of the seriousness of his conduct and insight regarding the trauma he caused the complainant. He has not tried to minimise the seriousness of his conduct. He was and remains very concerned that this incident will affect his son later in life. His acceptance of wrong-doing and his attitude is important, it is a very positive factor in terms of his reform.

I have a report from forensic psychiatrist Dr Cheryl Colquhoun. She describes the defendant as showing good insight and judgment in terms of willingness to seek help for his psychological difficulties and drug use. In her opinion, he has a substance use disorder, predominantly

methamphetamines, currently in remission in a restricted environment, namely prison. He has a significant trauma history which used to be referred to as a Complex Post-Traumatic Stress Disorder. His suicide attempts and mental health difficulties may be attributable entirely to his trauma history or likely also contributing to these difficulties is a borderline personality structure. This personality structure is associated with difficulties controlling anger, impulsivity and behavioural instability. Dr Colquhoun notes that he has been diagnosed with Autistic Spectrum Disorder which she thought was on the milder end of the spectrum.

She notes that the defendant would benefit from an extended period of psychotherapy with a psychologist to address his history of trauma, and also to address more practical cognitive behavioural therapy approaches to coping with some of the emotional effects of autism and his personality structure, to help with learning new social skills and anger management strategies. He is considered a good candidate for treatment as his attitude to engagement with a rehabilitation program is "very good".

It is also thought he may benefit from a specific anger management course, he would benefit too from engagement with a drug and alcohol service to support his abstinence from drug use in the community. He would benefit from a vocational pursuit. Dr Colquhoun also suggested he may benefit from further assessment to determine whether he is still suffering with symptoms of ADHD in adulthood and addressed medication that may assist in that regard and also to regulate his mood. She notes his access to psychiatric and psychological interventions would be limited in prison.

I have also been provided with a pre-sentence report. The tenor of the defendant's interview with community corrections is consistent with his interview with Dr Colquhoun. The defendant expressed remorse for his offending and has taken responsibility for his actions. He has insight regarding the detrimental impact of his father's violence upon his own development and is particularly distressed that he has now repeated the same behaviour. He is able to identify steps that he needs to take to turn his life around and lead a productive and responsible life. He has expressed that he does not want to ever repeat this behaviour and is willing to participate in rehabilitative programs and therapy. It is noted by the author of the report that in light of COVID-19, all programs within the prison have been suspended. He is considered suitable for supervised probation and that would provide opportunity to refer the defendant to a range of services including the National Disability Insurance Scheme. These recommendations, as well as the recommendations of Dr Colquhoun, shall be reflected in the sentencing orders.

The defendant has been in custody since 8 December 2019. He has found the prison environment very difficult and stressful, no doubt exacerbated by his difficulties socially.

Mr Shaw, the sentence must properly reflect the seriousness of this crime, of which you are well aware, the inherently dangerous nature of this conduct as well as the emotional and psychological harm it has caused the complainant and potentially your child. But, it must also reflect that you are someone who has good prospects of rehabilitation. That is, good prospects of leading a productive and responsible life, particularly if you are provided with the support you need, which was lacking in your formative years. It is in the community's interests that

your rehabilitation be promoted and encouraged. It is a most significant factor in your favour, Mr Shaw, that you are somebody who is really motivated, it seems to me, to participate in everything that is to be offered to you in terms of rehabilitation and programs.

I record convictions on all offences. For the crime of assault, I impose 15 months' imprisonment backdated to 8 December 2019. In relation to the summary offences of destroy property I impose two months' imprisonment to be served concurrently. I suspend eight months of that 15 month term. So that means seven months is to be served from 8 December 2019.

The part of the sentence that is suspended, is suspended for an operational period of 18 months from the date of your release from prison. It is suspended on the following conditions: you must not commit any offences which could attract a term of imprisonment for that period of 18 months from release and you must also comply with all of the conditions of a community correction order which I am about to impose.

I impose a community correction order to be in place for 18 months from the date of your release. The conditions are as follows. You must comply with all of the core conditions of community correction orders as stipulated in the *Sentencing Act* for the operational period of 18 months from the date of your release. These conditions will be specified in the written order that you will be given. They include that you are not to commit an offence punishable by imprisonment for the period of 18 months, you must report to the Hobart Community Corrections office within 48 hours (two working days) of the date of your release by telephone or in person as required. You must report and comply with the directions of a probation officer, you must not leave Tasmania without permission and you must notify your probation officer of any change of address.

I also impose special conditions as part of the same community correction order: you must, during the operational period of 18 months, submit to the supervision of a probation officer as required by the probation officer. Further, you must attend educational and other programs as directed by your probation officer, you must undergo assessment and treatment for drug dependency as directed by a probation officer, you must submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer, you must attend anger management counselling as directed by a probation officer, you must complete the Family Violence Offender Intervention Program, or its interstate equivalent, if directed and comply with directions that you attend for assessment for such a program and you must comply with a referral by your probation officer for the National Disability Insurance Scheme.

I also request that a copy of Dr Colquhoun's report is to be provided to Community Corrections and to Mr Shaw's treatment providers.

I make an order that the offence of assault be recorded as a family violence offence pursuant to s 13A of the *Family Violence Act* 2003.

I make a family violence order pursuant to s 36 of the *Family Violence Act* in the same terms as the interim family violence order 9 December 2019 to be effective for a period of 12 months from today.