

Mr O'Brien, you have pleaded guilty to two counts of assault, and 1 count of the summary offence of common assault.

These offences were all committed in a family violence context. The complainants are your former partner and her mother. In order to avoid confusion, I will only refer to your former partner as the complainant. The complainant and you had been a de facto relationship between 2012 and 2017. Although the relationship had come to an end, you continued to live in the same house. You lived there with the two children of the relationship, aged 3 and 2.

You committed the common assault on 21 October 2019. The complainant was using the toilet. You told her she was taking too long, and then entered the room and smacked her to the side of the face.

The two crimes were committed on 7 November 2019. You and the complainant had argued, it would seem about the division of responsibility for the care of the children. The complainant told you she was leaving. You responded by slapping her, dragging her by the hair and punching her to the face. The punch landed in the mouth area. You then held her by the throat with both hands for approximately 10 seconds. After that, you held her down on a bed with your forearm against her neck. Again, this continued for approximately 10 seconds. Both actions, holding her by the throat and then holding her down with your forearm against her neck, restricted her breathing. After this, the complainant contacted her mother to arrange collection. You told her that she would not be leaving with her mother. You continued to behave erratically. You then slapped the complainant with an open hand, dragged her back into the house by her hair and threw her to the ground. She landed on her back. The impact of the fall caused her difficulty breathing. These events constitute the assault contained in count 1 on the indictment.

The complainant's mother, Ms Jamieson, had arrived while these events were taking place. When you realised that she had done so, you told the complainant that she could not leave. However, the complainant and her mother both got into the mother's car. You approached the passenger side of the car and attempted to drag the complainant from the passenger seat. Ms Jamieson leaned over to assist the complainant resist you. You responded by punching Ms Jamieson to the face and then grabbing her by the arm and dragging her from the driver side of the car through the passenger doorway. You then hit her to the elbow. You took the complainant back inside the house but soon after let her go.

The impact on these women of this violence was considerable, and the potential for harm far greater. As you well knew at the time, the complainant suffers from late stage cystic fibrosis. Her lung capacity was between 17% and 20% and her weight approximately 39 kg. As a result of the assaults, she suffered extensive bruising and swelling to her face and neck. Her eyes were swollen to the point where they were difficult to open and she suffered significant pain to her neck, lumbar spine and left elbow. A medical report explains that the pain caused by these injuries resulted in difficulty coughing. Coughing is necessary in a person with cystic fibrosis to deal with the effects of that condition on lung function. The effect of the injuries on the complainant's ability to cough put her at increased risk of serious respiratory compromise. Accordingly, she was hospitalised for a period of 18 days, during which she underwent a number of procedures, including surgery, to treat her injuries and lung function. The treating

doctor has commented that, given her underlying condition, the mechanism of the assault could have been life-threatening. It is not suggested that you realised that you were endangering the complainant's life. If you had realised that, then you would be facing a more serious charge. However, you were well aware of her condition and must have realised that she was vulnerable to an attack of this nature. Further, as has been stated by this Court on a number of occasions, placing pressure on the neck and throat of a victim during the course of an assault is extremely dangerous and considerably aggravates the seriousness of the assault. That you would do so to a person you knew to suffer from cystic fibrosis indicates a high degree of moral culpability.

The impact on Ms Jamieson was also significant. She suffered swelling and bruising to the right side of her face over her cheekbone and a small wound to the outer corner of her right eye. Further, she suffered a comminuted fracture of the left upper arm. It seems clear that this had been caused by the action of dragging her through the passenger side of the car, past the complainant who was still sitting in the passenger seat, and then afterwards hitting Ms Jamieson's arm. She was admitted to hospital for surgical repair of the fracture and remained in hospital for five days. She has subsequently been diagnosed with an ongoing injury of the radial nerve, which has resulted in minimal function of the wrist and poor sensation over her hand and thumb area.

Neither woman has provided a victim impact statement.

You are 27 years of age. You have a significant criminal history which includes a number of offences involving resisting, threatening and assaulting police officers, as well as other convictions for common assault. Prior to the commission of the offences with which I am dealing, you had last been dealt with by a court in 2015. There does not seem to be any prior matter on your record that expressly relates to family violence.

Your counsel claims that you are extremely remorseful and ashamed of your behaviour in respect of this offending. Your childhood had been significantly affected by family violence, including against you and your siblings. You were homeless by 12 and after that had lived in shelters and on the streets. You also suffered other forms of abuse when you were young. You started to use illicit drugs at a young age. Because of your experiences as a child, you had, prior to committing these offences, held in contempt anyone who struck or hurt a female. Your only explanation for committing such behaviour yourself is that problems had developed in the relationship over a long period of time. These largely related to the effects of the complainant's health condition and the fact that you believed that a considerable and unfair proportion of the parenting duties of your children had been placed on you. This had, understandably, begun to wear on you, and a few months before this conduct, you had started to use a prescription drug, albeit without prescription, as a means of coping with these problems. You were taking well in excess of the recommended dosage at the time of this offending, and your belief is that this must have affected your emotions and your capacity to control your anger. While this provides some explanation for your conduct, there has been no expert evidence put to me to support your belief. However, your claim of remorse is supported by your response to this offending. You indicated pleas of guilty at an early time. You have taken courses since being on remand, designed to deal with some of the underlying issues which you believe contributed to this behaviour. You did not apply for bail when you were arrested, and consented to a Family Violence Order on your first appearance in court.

I accept that you are remorseful. However, it goes without saying that this is a very serious case. The assaults on both women were brutal, cruel and degrading. The multiple attacks to the

throat and neck of the complainant were particularly dangerous, and made more so because of her underlying condition. You were well aware of this condition. In actual fact, your violence caused significant injury to both women. Your conduct is also aggravated by the fact that the young children were present in the house at the time of the offending. There is a clear need in this case for a sentence which emphasises general deterrence and denunciation of such conduct. The only possible sentence is a significant sentence of imprisonment. I will, however, allow early release on parole, so as to provide the Parole Board with an opportunity to encourage and support your promised rehabilitation.

The orders I make are as follows:

- 1      You are convicted of the crimes and the offence to which you have pleaded guilty.
- 2      You are sentenced to a global term of three years and six months' imprisonment, which will be backdated to 7 November 2019. I order that you not be eligible for parole until you have served one half of that sentence.
- 3      Pursuant to s 13A of the *Family Violence Act*, I direct that count 1 on the indictment and count 2 on complaint 10456/19 be recorded on your criminal record as family violence offences.