

TASMANIA v SIMON JAMES CLOTHIER
COMMENTS ON PASSING SENTENCE

26 APRIL 2007
CRAWFORD J

Simon James Clothier pleaded guilty to an aggravated burglary committed for the purpose of a man being assaulted and to the consequent assault.

He was once a resident of Longford but had moved to Western Australia. He returned to visit family and friends for Christmas 2005.

On 24 December he visited the Longford home of friends and consumed a lot of alcohol. While he was there a disturbance occurred between people at that house and the neighbours. The dispute included missiles being thrown in both directions. A man was arrested by police as a consequence. The accused went elsewhere afterwards and continued drinking. Later that night he returned to the same house in an intoxicated condition. A discussion had already taken place among those at the house during which a plan was hatched to go to another house in a different street for the purpose of assaulting the complainant in these proceedings. He had been involved in some way in the earlier disturbance. The accused joined in. Seven of them walked to the other house. Four of them, including the accused, entered through the front door and another came through the back door. It was an appalling intrusion into a private home. The complainant was attacked with punches, kicks, an axe and something resembling a fence paling. It was a brutal and cowardly attack. He suffered badly at their hands, sustaining among other injuries, three fractured ribs and a haemothorax.

The accused was not personally responsible for most of the terrible blows administered to the complainant but he was criminally responsible. He admitted to police that he punched the man when he was face down on the floor as a result of others assaulting him. The accused had blood on his shoes and admitted to the police that it was possible that he also kicked the man, but claimed, and still claims, that he cannot remember doing so.

For participating in the way he did in the violent entry into a man's home and such a dreadful attack on him, the only appropriate sentence is one that includes actual imprisonment, notwithstanding that the violence personally administered by him was nowhere near as bad as that administered by some of the others. I distinguish his situation from that of Nicholas Richard McCullagh, who was sentenced to six months' wholly suspended imprisonment, because of the greater involvement of this accused.

He was 20 years old with no record for violence. He comes from this State but has lived and worked in Western Australia for the last two years. He has a good industrial record, he admitted his involvement to the police in an interview later that day and he has now pleaded guilty. The pre-sentence report states that he appears genuinely remorseful. His counsel urged upon the Court that he is a young man with good prospects. That may well be so but I view the gravity of the offences as so serious as to demand incarceration for a period of time.

He is convicted and sentenced to imprisonment for six months from 4 April 2007. Particularly, in recognition of his sound character traits, two months of the imprisonment will be suspended upon condition that he is of good behaviour for the next three years. He is liable to pay \$100 by way of victims of crime compensation levies and payment is directed within one month.