

STATE OF TASMANIA v BRENDAN BARKER
COMMENTS ON PASSING SENTENCE

26 SEPTEMBER 2019
BRETT J

Mr Barker, you have pleaded guilty to one count of aggravated burglary and one count of assault. You have also pleaded guilty to the summary offence of injuring property.

The crimes were committed by you on 3 March 2019. The context was that you and family members, including your partner, had been consuming alcohol and discussing the complainant. He is your partner's uncle, and many years ago had been charged with, but acquitted of a sexual offence, in relation to her. In your drunken state, you became aggravated and decided to confront him. You and another family member went to the house where the complainant lived with his partner and children. You physically attacked him, and during the course of this attack, pushed him inside the door of his home. The attack continued in his home. During the course of this physical encounter, a wall in the home was damaged. The assault included pushing him into the wall, ripping his shirt off and grabbing him by the throat. All of this happened in the presence of his partner and while his children were in the house. It is highly probable, in my view, that they would have been aware of what was happening.

You left when the complainant's partner telephoned police, but returned shortly after to bang on the door and demand that the complainant come out to fight you. However, fortunately, police arrived shortly afterwards.

The complainant sustained a dislocated finger together with other superficial injuries including scratches and abrasions. He has provided an impact statement. He is still having problems with the finger. The most serious ongoing concern, however, is the psychological impact that this attack has had on his family and himself. Much of this has to do with ongoing apprehension and the fact that your conduct has undermined their sense of safety and security. These are understandable and foreseeable reactions arising from criminal conduct of the nature perpetrated by you.

That conduct constituted serious criminality. There was no justification for your actions. Your reason for attacking this man was misplaced; the legal system had determined the matter and he had been acquitted of the charge. Further, I do not accept that your conduct is mitigated because you were somehow supporting or defending your partner. You did her no favours by taking this action. In any event, it seems to me probable that you did not do it for her but rather simply gave into the demands of your own drunken and misplaced anger.

A matter of some importance is that ridiculous and reckless vigilante violence of this nature represents a significant threat to the coherence of the community and the rule of law. Your motive aggravates your criminal culpability. Conduct of this nature must be denounced and deterred by appropriate punishment. I am also particularly concerned that you attacked this man in his own home and in the presence of his family, which included children. This also is an aggravating feature of your conduct.

You are 26 years of age. Your criminal history is not pristine but it also does not include conduct as serious as this. There is a common assault in 2011 in respect of which no conviction was recorded, and you have also been convicted more than once of offences which, I infer, are probably linked to poor decisions made after drinking alcohol. These include resisting police and disorderly conduct. On the other hand, it would seem that you are an industrious person. You have steady employment in the family business. You and your partner now have a child,

and I am told that you take this responsibility seriously. You are remorseful and your counsel asserts that you have insight into the serious nature of your conduct. This is consistent with an early plea of guilty and the fact that there has been no further offending since you committed these crimes.

The serious nature of your conduct and the need for general deterrence requires the imposition of a sentence of imprisonment. However, because of your early plea of guilty and your personal circumstances, I am satisfied that it is appropriate to wholly suspend the sentence. However, the assessment has recommended a community corrections order requiring both ongoing supervision and community service. I will make these requirements a condition of the suspension of the sentence.

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 10 months' imprisonment. The whole of the sentence will be suspended for a period of 18 months on the following conditions:
 - (a) that you are not to commit another offence punishable by imprisonment during that period;
 - (b) that you will be subject to the supervision of a probation officer. The Court notes that the conditions referred to in s 24(5B) of the *Sentencing Act* apply to this condition;
 - (c) that you will perform community service for a period of 126 hours. The Court notes that the sections referred to in s 24(5A) of the *Sentencing Act* apply to this condition;
 - (d) for the purposes of the provisions relating to supervision and community service:
 - (i) you must report to a probation officer at the office of community corrections in Launceston within 3 clear days of today; and
 - (ii) the operational period of the order is 18 months.

I make a compensation order in favour of Corina Rogers in the sum of \$148.50.