

Mr Kikuchi, you have pleaded guilty to one count of assault contrary to the *Criminal Code*, and a further count of common assault.

These were family violence offences committed by you against your wife. They were committed on 12 September 2019. At that time, you and she had been married for about three years.

It is not disputed by the prosecution that prior to the commencement of the relevant events, in the early afternoon of that day, you had searched the complainant's Facebook account and saw intimate photographs, including of genitalia, which had been exchanged between her and a male friend. You had been suspicious of her relationship with this man for some time. You became angry and immediately went to the complainant's place of employment, a coffee shop. You angrily confronted the complainant and caused a scene in front of her employer and fellow employees. Those people attempted to calm you down, but you responded angrily and aggressively to them as well. It is clear that you were in a rage, and were acting with little control or restraint. Eventually, you committed the common assault by taking the complainant by the wrist and pulling her from the store. Although the complainant's employer intervened, the complainant agreed to go with you because she did not want to perpetuate this scene in the shop.

You and she then drove in your vehicle to a nearby location. While driving, you punched the complainant multiple times with force to her face. You also punched into the right side of her body, and continued to shout at and verbally abuse her.

After this, the complainant attempted to escape from the car. However, you pulled her back by grabbing her on the forearm and wrist area. You then took hold of her jaw and throat and began to squeeze her throat. She had difficulty breathing and she believed that she might die. Eventually, you let her go, but then grabbed her by the hair, and put her in a headlock. Throughout your attack, she was trying to escape. By preventing her from doing so, you deprived her of her liberty. You were also telling her that you were going to kill her. The assault ended when two men working nearby intervened. You were subsequently arrested, and spent 18 days in custody before being released on bail.

The complainant suffered injuries which included cuts to her lips, bruising and swelling to her lips and face, bruising to her right wrist and hand area, and cuts and bruising to her neck. She did not seek medical attention. I have not been provided with an impact statement from her. However, I have been told that you and she have been engaged in counselling since these events and that she wishes to continue the marriage.

You were 25 years of age when you committed these offences, and you are now 26. You are in secure full-time employment and have no prior convictions at all. You were born and raised in the Philippines. In fact, you and the complainant were both born there. You met there in 2014, and you both emigrated to Australia in 2015, shortly before your marriage. You are both living in Australia pursuant to visas, which in your case, at least, is a working visa. Upon conviction for this crime, there is a risk that your visa will be cancelled or not renewed and you will have to return to the Philippines. Under the Federal Migration Act, the Minister must cancel your visa if you are sentenced to a term of actual imprisonment and the whole sentence is of a particular length. I am satisfied that I can take into account the potential adverse impact

of your conviction and sentence for this crime on your immigration status, as a punitive consequence of the commission of the crime. This will have significant weight if the appropriate sentence means that the Visa must necessarily be cancelled. Otherwise, while the potential impact on your residential status and immigration prospects remains a relevant consideration, the weight to be given to it is limited because there is no real way for me to gauge or judge what the Federal Minister will do under the relevant provisions. However, there is the possibility that your Visa will still be cancelled under his discretion. Further, even if cancellation is mandatory, it is only one factor to be taken into account and must, of course, be balanced against all other relevant sentencing considerations.

The objective seriousness of this assault is high. It was an episode of serious family violence and was brutal and sustained. The fact that you choked the complainant is an aggravating factor. The common assault was perpetrated in front of others, and the whole experience must have been frightening, degrading and painful for the complainant.

Having said this, there are some factors in this case which provide you with significant mitigation. It is accepted that you acted contrary to your normal character. You did so because of the heightened emotions which arose upon you seeing the photographs on the complainant's Facebook site. Although I suspect that you had no business looking at that site, I accept that the photographs that you saw are consistent with your claim that your conduct was out of character. This claim is also supported by your complete lack of prior criminal history, and your otherwise stable and positive character. You are extremely remorseful and your conduct since this occurred is consistent with that remorse. You pleaded guilty at a relatively early time, and you have sought and continued counselling with a clinical psychotherapist. A report from the psychologist confirms that you have engaged with this therapy in a meaningful way. Further, according to the pre-sentence report, you have also been engaging in an appropriate program with Relationships Australia. The existence of this remorse and your appropriate response is also consistent with the fact that the complainant has engaged in therapy with you, and appears willing to continue the marriage. Because of your response and voluntary engagement in appropriate levels of counselling, Community Corrections has assessed you as requiring a very low level of intervention, and as being at a low risk of future family violence. The report does not recommend ongoing supervision nor engagement in any other programs.

In respect of sentencing for serious family violence perpetrated by a person who has not previously been before the court for that reason, and where there is a strong basis to conclude that the conduct was out of character, and that there is appropriate insight, remorse and commitment to reform, I refer to my comments in the case of *Cannell v Probert* [2017] TASSC 69 at [24]:

"An emphasis on therapeutic intervention by the court in respect of an offender who is being sentenced for his first family violence offence is consistent with the underlying purpose and objectives of the Family Violence Act. Section 3 sets out the objects of the Act as 'In the administration of this Act, the safety, psychological wellbeing and interests of people affected by family violence are paramount considerations.' While a punitive and protective response is essential in cases of serious and repeated family violence, it must also be consistent with the stated purpose of the legislation that consideration is given to therapeutic intervention with a view to achieving rehabilitation and behavioural change, when an offender presents before the court for the first time in respect of acts of spontaneous family violence. Prevention of future violence by use of effective strategies to modify behaviour in respect of offenders who have appropriate

insight and desire for change is likely to promote the safety, psychological wellbeing and interests of people affected by family violence."

It follows that while this was a serious crime, and general deterrence is an important sentencing consideration, I think I should also place considerable emphasis on your rehabilitation. In your case, when I have regard to the assessment contained in the pre-sentence report, and all of the other material to which I have been referred, it is apparent that mandated supervision is not necessary to achieve rehabilitation. What is required is that the sentence provide you with an opportunity to continue to reflect and develop insight, and pursue appropriate counselling and other programs voluntarily, while also marking the objective seriousness of the offending. Accordingly, I am satisfied that this case can be appropriately dealt with by imposition of a suspended sentence of imprisonment. It is my judgment that such a sentence will provide the optimum opportunity to ensure that you do not commit family violence again.

Accordingly, the orders I make are as follows:

- 1      You are convicted of the crime and the offence to which you have pleaded guilty.
- 2      You are sentenced to a global term of 15 months' imprisonment, which will be wholly suspended for a period of 18 months on the condition that you are not to commit another offence punishable by imprisonment during that period.
- 3      Pursuant to s 13A of the *Family Violence Act*, I direct that each offence be recorded on your criminal record as a family violence offence.