

By unanimous verdicts of a jury Mr Braslin, the defendant has been found guilty of one count of aggravated burglary, one count of committing an unlawful act intended to cause grievous bodily harm, and two counts of unlawfully injuring property. These crimes were committed during one incident of what is commonly called a home invasion, at a property in Risdon Vale on 27 December 2017. In the trial, the essential facts were not in dispute; the issue was the identification of the defendant as one of the offenders. The facts as I find them are as follows. At about 10pm on the day mentioned, the complainant, Gregory Magrath, was at his house with two adult sons, Guy Magrath and Jake Williams, and two friends. There was a knock on the door. There was inconsistent evidence about who answered it, but for these purposes, the issue does not need to be resolved. Within a very short period of time both Gregory and Guy Magrath were in a hallway area just inside the front door. When the door was opened three men, possibly four, were outside. The three who were immediately visible were armed with pieces of branch wood. There was also an inconsistency in the evidence about what was said at that point, but again it is of no great moment. Gregory Magrath said one of the men asked if they could come in, to go to through the house. He refused. Guy Magrath, whose evidence I prefer, said he answered the door and said that one of the men asked for his father, who then went to the door, at which point one of the men asked to come in. His father refused and when challenged said it was his house; they were not coming in. The man also asked where something was, but Guy Magrath could not make out the word or words. He says his father replied that he did not know what they were talking about. On any version, after a brief conversation at the door, Gregory Magrath was attacked by two of the men using pieces of wood. This was just inside the front door. Guy Magrath said the defendant was initially standing behind the other two men but then pushed through to attack the complainant. The complainant said it was the man in front who first hit him but in any event, I am satisfied the defendant struck the first blow. He struck Gregory Magrath to the top of his head. The blow was delivered in a downwards motion using both hands. The complainant fell to the floor and was struck twice again to the head by the defendant. The evidence establishes another blow to the arm, delivered by a second man. The men then left the house. On leaving the property two windows next to the front door and a bedroom window were broken. Windows in a utility vehicle parked on the property were also smashed. There was no evidence as to who actually committed these acts, but the jury found the defendant criminally responsible. That responsibility was either by way of actually committing the crime, in various ways, or as an accessory. The forensic evidence would appear to put the defendant close to a breaking or broken house window but otherwise there is no evidence that bears on his actual involvement or any arrangement with the others. I will give the defendant the benefit of the doubt and proceed on the basis that he abetted the damage to property, although in the circumstances it is of no great significance. Police and ambulance were called to the scene. The defendant was spoken to by police officers at his home at about 2.15am the following morning. He denied being involved and said he had been at a bottle shop buying alcohol at the time. Exhibits were taken, one of which ultimately yielded tiny glass fragments that tied him to the scene. As to the complainant, at the hospital treating doctors noted three lacerations to the front part of his head. They were generally to the front right area. The most prominent was about six centimetres long and was deep enough to reveal the bone of the skull. The head lacerations were stapled and the forearm lacerations stitched. The large laceration needed 12 staples. There were seven in each of the other lacerations to the head. The medical opinion was that the degree of stapling required was quite a lot for a typical head injury. The prognosis was that there should be no long term deficits as far as physical injury was concerned. I have a victim impact statement dated 24 August 2020. The complainant

says the event was traumatic and terrifying for him and he still felt terrified. He now only ventures out once a fortnight to do some shopping. The incident is constantly on his mind. It took about two months for the wounds to heal and he still has scarring. He says he was going through a difficult time when the incident happened, and he has now not been able to eat or sleep properly since. He was taking medication for anxiety and this has been increased. He has also suffered financially as he left the State for a time because of his fear and anxiety. The house and vehicle were not insured and he has paid for the repairs.

The defendant is now 37 years old. He has a very lengthy recorded history of offending, with violence being prominent in that history. He has been dealt with in this Court for offences of violence on four occasions. As a youth, in September 1999 he was convicted of wounding and sentenced to six months' imprisonment. In April 2003, he was sentenced to 12 months' imprisonment for assault. Of particular significance is a sentence of four years' imprisonment, with no parole eligibility, imposed in April 2007 on a charge of causing grievous bodily harm. It is particularly significant because the defendant was part of an attack by three men on another man on the front steps of the victim's house. The sentencing judge described it as a very violent assault, with each of the three men being armed with sticks and repeatedly hitting the complainant about the head and body. The similarities are obvious. In that assault, serious injury was caused to the victim's brain and lungs. Next, in August 2015, for the crime of assault the defendant was sentenced to 15 months' imprisonment the execution of three months of which was suspended on conditions for three years. About a month later in the Magistrates Court, on a charge of trespass and driving offences, the defendant was sentenced to four months' imprisonment suspended on conditions for two years. This offending puts him in breach of the conditions of both suspended sentences and I have before me applications to activate them. I note that in June 2017 following convictions for disorderly conduct and fail to comply with the direction of a police officer, an application to activate the four months resulted in no order being made. I am satisfied that this Court has jurisdiction in relation to that sentence. This offending is a further breach of the same order, and the legislation gives the Court jurisdiction in respect of each breach. Counsel for the defendant accepted that the activation of both sentences was not unjust. Returning to the history, before, in between and after those matters I have mentioned, there are convictions for a number of summary assaults, including assaults on police. Since 2015 however, the offending has more been in relation to traffic matters some, such as driving whilst disqualified and evading police resulting in imprisonment, and to dishonesty. Generally, the defendant's record shows an absolute disregard for the law and the rights and safety of others. There is a wide range of offending. He has three convictions for escape and one for attempted escape. He has served numerous terms of imprisonment. The judge who sentenced the defendant for the crime of wounding also sentenced him for the later crime of causing grievous bodily harm. When passing sentence for that later crime, his Honour noted his earlier comment that the defendant would simply not comply with rules that enabled society to live harmoniously, and that nothing had changed in the intervening eight years. That seems to remain the case, although as I have noted, since 2015 and before this offending there was, in the record at least, some signs of change for the better. That is relevant to rehabilitation. I acknowledge that the defendant had a very difficult background. He was exposed to significant violence and alcohol abuse as a child. He was put in State care and abused. This is said to explain later substance abuse and his violent behaviour. He has a long term partner with whom he has three children. He has struggled to find employment. Shortly before this incident he was employed on a fishing boat but was injured, and off work. By that time he had been able to stay away from illicit substances for a while and is still keen not to relapse. I take those matters into account.

This sort of criminal conduct needs to be very strongly condemned. Members of the community should expect to feel safe, particularly in their own homes. General deterrence and denunciation are very weighty factors. In Mr Braslin's case he has shown no real signs of modifying his violent behaviour. Personal deterrence is also a weighty factor, and there is an additional element of public protection which I think needs to be considered. The defendant and the others went to the house having armed themselves with pieces of wood taken from a pile in the front yard. In the circumstances, the guilty verdict on the aggravated burglary charge means the defendant's intentions when he went into the house were ones of violence. The crime of committing an act intended to cause grievous bodily harm obviously contains the element of intention, and it is that which generally makes it a serious crime, and a more serious crime than causing grievous bodily harm, although there is some degree of overlapping between the two crimes. It is the intention, though, in relation to this crime that is important. In this case, the particulars alleged an intention to maim, disable, disfigure or cause grievous bodily harm. The medical evidence was that the event could well have caused significant injury such as a fractured skull and brain injury, and it is most fortunate that the complainant was not more seriously injured. Actual bodily harm was caused. The severity of injury and the level of residual impairment of harm are particularly relevant factors, and I have already mentioned those. There are further matters which really amount to an absence of aggravating factors. The use of weapons does not seem to have been premeditated in the sense that the branches of wood were, as I have mentioned, picked up in the front yard on the way to the house. It can be said that the attack was quite short-lived and not prolonged. It quickly ended without intervention but it was vicious, and in the presence of family members and friends. The damage caused to property when the men were leaving was angry and vindictive, and costly to the complainant. The defendant's history of offending means he is not entitled to any leniency. I bear in mind that the sentence should not be disproportionate to the gravity of the conduct. I also bear in mind that the number of charges faced arise from the one incident, and I bear in mind the total effect of the imposition of a number of sentences.

Mr Braslin, for the reasons I have outlined, there is no alternative but for this Court to impose a lengthy term of imprisonment. I am however, prepared to give you an opportunity to persuade the Parole Board that you should serve part of that in the community. First, I activate the sentence of three months' imprisonment. Taking into account time already spent in custody that will commence on 25 August 2020. Next, I activate the sentence of four months. That will be served cumulatively. Next, you are convicted of these crimes and sentenced to four years and nine months' imprisonment cumulative to the previous sentences. I order that you not be eligible for parole until you have served three years and four months of that last sentence. I make a compensation order in favour of Gregory Magrath in the sum of \$5,220.