

Mr Howlett, you have pleaded guilty to one count of causing grievous bodily harm.

The crime was committed on 17 May 2019, while you and the complainant were both in prison. You had known the complainant for some time, and there had recently been some antagonism between you. On the day of the crime, an argument started between you when you were both away from your cells. You each threw a punch at the other, although it is accepted that the complainant threw the first punch. After arguing for a while, the complainant returned to his cell. You followed him in and punched him several times to the face. He did not fight back, but attempted to cover his head with his arms to protect himself. However, one arm is amputated above the elbow, and, accordingly, his ability to defend himself in this way was compromised. When you finished assaulting him, you left the cell.

The complainant was seriously injured by the assault. The punches caused an eye to extrude from its socket. Despite emergency surgery, the eye could not be saved and it was removed. It is not suggested by the prosecution that you intended to cause this injury. However, your plea of guilty is on the basis that you actually foresaw that grievous bodily harm of some form was a likely consequence of punching the complainant multiple times to the head in the way that you did, but you proceeded to do so regardless of that risk. The injury, of course, has resulted in a significant and permanent disability. This has had a severe impact on the complainant generally and he has described this impact in an impact statement. The impact so described is a completely foreseeable consequence of an injury of this nature.

You were 35 years of age when you committed this crime, and you are now 37. You are single and have an eight-year-old daughter, with whom you were having regular contact prior to your current incarceration. You had a relatively good work history until you were forced a stop work because of a detached retina. Upon release from prison, you will be entitled to a disability support pension because of this. The said condition has rendered you blind in one eye.

Until 2010, you had a relatively modest criminal history. However, in that year, you were convicted of trafficking in drugs, for which you were sentenced to a wholly suspended sentence. In 2016 and again in 2017, you were convicted of common assault. You received a partially suspended sentence for the latter offence. In 2018, you were convicted by this Court of attempted armed robbery, and sentenced to 2 years and six months' imprisonment, effective from 20 December 2017. A few months later, you were convicted of two counts of common assault, committed in a family violence context, and was sentenced to a further period of imprisonment, which effectively increased your existing sentence by seven months. Understandably, given the commission of this crime, you were denied parole in respect of those sentences, and accordingly will serve the aggregate period imposed, subject only to remissions. According to the prison records your earliest release date is 19 February 2021 and latest release date 19 May 2021, depending on the grant of remissions. This information is relevant to the assessment of the sentence to be imposed by me, because I must also take into account the principles of totality. Of course, this crime is completely separate and additional criminal conduct to that for which the other sentences were imposed, and should be served cumulatively upon the existing sentences, but I

must ensure that the aggregate effect of all sentences is not unduly crushing, having regard to your record and prospects.

When you committed this crime, you were in the minimum security part of the prison. However, your counsel tells me that you were placed into maximum security as a result of the commission of this crime and have been there ever since. Conditions in that section of the prison result in you being locked in your cell, on average, between 22 and 24 hours each day. This clearly results in a more difficult and onerous experience of prison than would otherwise be the case. Given that this situation has come about because you committed a crime, and must, or ought to have realised that this placement in maximum security would, or at least could, be a consequence of your offending, I do not think that the onerous conditions alone constitute a mitigating factor. However, I accept that I should take into account the fact that you have brought on yourself a harsher regime of punishment as a consequence of your crime, and accordingly have suffered some punishment in this way already. I will take this into account in your favour although its effect on sentence will be relatively modest.

The objective seriousness of the crime, including the brutal nature of the assault and the serious and permanent harm caused by it, requires the imposition of a significant sentence of imprisonment. I regard the fact that the crime was perpetrated while you were in prison serving a sentence for another crime involving violence, as an aggravating factor. In mitigation, I will take into account the principles of totality and your current prison conditions in the manner already discussed. I will also have regard to your plea of guilty. This has utilitarian benefit, although the plea was indicated at a relatively late stage and the complainant had, by then, already been involved in preparation for the trial.

Finally, I must give consideration to the question of a non-parole period. Notwithstanding that you committed this serious crime while serving another sentence, it is appropriate in my opinion that provision be made for early release on parole, if that is what the Parole Board decides. However, I do think that the non-parole period should be longer than the statutory minimum. In this case, a difficulty arises from the operation of s 71 of the *Corrections Act*. In my view, the effect of the ordinary meaning of that provision is that any non-parole period specified by me in this sentence, and that includes the entire sentence if I do not specify a non-parole period, will operate from the expiration of the aggregate minimum terms applicable to the earlier sentences. On my understanding of the record, the aggregate minimum term is two years and four months, commencing on 20 December 2017. Hence, this period expired on 19 April 2019. On my reading of s 71, the minimum term applicable to the sentence I impose will operate cumulatively to that period, and hence will commence on 20 April 2019. It does not seem that I have any discretion about that commencement date, it operates automatically under the statute. Accordingly, even if the full sentence I am about to impose is the minimum term, then you will become eligible for parole well before a time which I consider appropriate.

Accordingly, I have decided not to make an order under s 17(2) of the *Sentencing Act*. It follows that s 17(3A) will apply to this sentence, and you will therefore not be eligible for parole in respect of this sentence. The effect of proceeding in that way is that the whole sentence will be the minimum term, and this term will operate cumulatively upon the aggregate minimum term applicable to the previous sentences for the specific purpose of determining when you become

eligible for parole. In other words, although this sentence is cumulative to the existing sentence, the minimum term, represented by the whole sentence, will operate from 20 April 2019.

Counsel have informed me that the proper interpretation and operation of s 71 is currently the subject of a reserved decision of the Full Court. If, upon that Court handing down its decision, my interpretation of s 71 is shown to be incorrect, then I would regard that as a clear basis for correction of sentence under s 94 of the *Sentencing Act*, although I note that there is a time limit relevant to the operation of that provision.

The orders I make are as follows:

You are convicted of the crime to which you have pleaded guilty.

You are sentenced to a term of 2 years and 6 months' imprisonment. That sentence will be served cumulatively upon the sentence currently being served by you. For the reasons I have already given, I decline to make an order under s 17(2) of the *Sentencing Act*, and you are therefore not eligible for parole in respect of this sentence. The effect of this order is that you will become eligible for parole, on my calculation, on 20 August 2021. For the record, I would indicate that were it not for the said provisions of the *Corrections Act*, and the non-parole period, in fact, commenced at the same time as the sentence, which I understand is the argument that was put to the Full Court, which would be in this case at the end of the current sentence, I would have imposed a non-parole period of 18 months.