

STATE OF TASMANIA v PAUL LUKE MASON
COMMENTS ON PASSING SENTENCE

30 NOVEMBER 2020
BRETT J

Mr Mason, you have pleaded guilty to one count of wounding. Another charge of assault will not be proceeded with by the prosecution at this time.

The crime was committed on 30 December 2018. At the time, you were living, or at least staying, in a house with your partner, in a shack community at White Beach. The complainant was staying in a neighbouring shack with 14 other members of his family, including several children.

In the evening, an argument developed between your partner and yourself. It is obvious that you had both been drinking alcohol for some time, because you were both highly intoxicated. During the argument, your partner left the house, probably to get away from you. You followed her and you both ended up in the front yard of the complainant's shack, still arguing. Some members of his family attempted to defuse the argument but you became aggressive and refused to leave. At this point, the complainant joined the group. He and the others used some force to escort you from the property, but I conclude that the force that they used was perfectly legal, they were entitled to eject you from their property.

As you left, you, picked up a paling from a fence that was lying on the ground and came back towards the group, swinging it. The complainant picked up a Besser block and held it over his face as protection. You then picked up a rock and threw it baseball style towards the complainant. You were approximately 5 metres away from him when you did this. The rock struck his left hand as it was holding the Besser block in front of his face. The impact of the rock caused a wound, in that the tip of his left index finger was partially severed. It also caused a fracture of this finger and a laceration of another finger. The prosecution accepts that you did not intend to cause these injuries but you foresaw the likelihood that your actions would cause such a wound and threw the rock anyway.

The complainant was taken by ambulance to hospital. His injuries required surgical repair. He has ongoing complications of the two injured fingers, including pain, numbness and stiffness. The ongoing pain is still significant. He is a cray fisherman and the disability arising from these injuries interferes with his capacity to undertake various tasks associated with his occupation, particularly those which involve fine motor skills. Further, in his impact statement, the complainant observes that a number of members of his family, including children, saw what happened and were shaken and upset by it.

You were 40 years of age when this happened and you are now 42. You have a number of children of your own, two of whom still live with you and are dependent on you. I have been told today that they are aged 17 and 15 and they are both still at school. You have recently entered into a new relationship. I am informed, and this seems to be corroborated by one of the reports, that this is a positive relationship, but of course it is in its early days. You have limited education, it seems a reduced intellectual capacity, and have not been in employment for some time. Your income currently is a disability support pension related to a diagnosis of short-term memory issues and dyslexia. You also receive a parenting payment related to the children who live with you.

Your criminal history is consistent with a long-standing problem with the use of alcohol. There are a number of convictions for traffic offences, including several drink driving matters. The

only prior conviction for an offence involving violence is a common assault, which was committed in 1996. Otherwise there does not seem to be a history of violence in your record. Your problem with alcohol, and to a lesser extent other illicit substances, extends back to your teenage years. You have since the commission of this offence, taken steps to deal with the alcohol problem, including by completing a residential course Bridge program. You claim to have reduced your alcohol consumption over the last year or so, and to have completely ceased consuming alcohol in recent months.

Your actions in throwing a rock towards this group of people was dangerous and reckless. The complainant and his family, in actual fact, had done nothing to you to warrant your anger or your attack on them. They were entitled to remove you from their property, and it seems that by following you down the laneway, they were doing nothing more than prudently ensuring that you went back to your house, as you should have done. I accept that in your drunken condition you misinterpreted what was happening, and I accept that you probably did legitimately feel frightened and apprehensive. But that was solely due to the situation you had created, and the misinterpretation was solely due to the alcohol you had consumed. Neither of those matters provide you any mitigation at all. Your actions in acting in a violent and dangerous way in fact resulted in serious injury. But throwing a rock at someone from a distance of 4 or 5 metres could easily have had even more serious consequences. You claim to be remorseful for your actions and their consequences on the complainant, and you have now entered a plea of guilty. I accept that the plea has been entered at a relatively early stage, although I take the point prior that to the indictment being filed, you did not indicate a plea of guilty to the assault. But I think it is reasonable to regard it as a relatively early plea because you were entitled to wait until the prosecution had decided what you would be charged with before you took that step, and then you entered a plea as soon as the prosecution had indicated that it would accept a proposal whereby one of the charges was not being proceeded with. In accordance with decisions of the High Court, it seems that that was a relatively early plea. In any event, I accept that your plea will have practical benefits in that the complainant and other members of the family will not have to go through a trial, or give evidence at a trial. And I accept also that it is consistent with your claim of remorse and your indication that you are committed to reforming your conduct, in particular, by getting on top of your alcohol problem.

The objective seriousness of your actions and their consequences requires a punitive response. Your conduct deserves the imposition of a sentence of imprisonment. However, having regard to your personal circumstances, your plea of guilty and your lack of prior convictions for violence, I have come to the conclusion that it is appropriate to impose a sentence which does not necessarily require the immediate service of a custodial term. A report prepared by a probation officer assesses you as unsuitable for a home detention order and for community service. However, the report also assesses that you require a high level of supervision and recommends a community based order. I accept this recommendation and, but I still think that the sentence I impose must fulfil the requirements of general deterrence and acknowledge the high criminality of your conduct. Accordingly, my intention is to impose a sentence of imprisonment, but wholly suspend the sentence on condition that you undertake probation supervision. This requirement will oblige you to engage with such supervision for a significant period of time, and will also facilitate completion of some programs recommended by the probation officer. This sentencing option will express the Court's denouncement of violent conduct of this nature, but will also provide support and encouragement for your rehabilitation and, particularly, in respect of your efforts to overcome your problem with alcohol and other illicit substances. Of course, if you commit any further offences during the period of suspension, then it is highly likely that you will have to serve the sentence in prison.

Accordingly, the orders I make are as follows:

- 1 You are convicted of the crime to which you have pleaded guilty.
- 2 You are sentenced to a term of 12 months' imprisonment, which will wholly 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) You will be subject to the supervision of a probation officer. You must comply with this condition for a period of 18 months. That period will commence from today. The Court notes that the conditions referred to in s 24(5B) of the Sentencing Act apply to this condition. These include that you must report to a probation officer within 3 clear days of today. In addition to the core conditions the order shall also include the following special condition:

you must, during the operational period of the order:
 - (i) attend educational and other programs as directed by the Court or a probation officer;
 - (ii) submit to the supervision of a probation officer as required by the probation officer;
 - (iii) undergo assessment and treatment for drug dependency as directed by a probation officer;
 - (iv) submit to testing for drug use as directed by a probation officer;
 - (v) undergo assessment and treatment for alcohol dependency as directed by a probation officer;
 - (vi) submit to testing for alcohol use as directed by a probation officer;
 - (vii) submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;
 - (viii) attend, participate in and complete the EQUIPS addiction program as directed by a probation officer;
 - (ix) attend, participate in and complete the EQUIPS aggression program as directed by a probation officer.