

STATE OF TASMANIA v DANIEL JAMES CRISP
COMMENTS ON PASSING SENTENCE

28 JANUARY 2021
MARSHALL AJ

Daniel James Crisp, you were found guilty by a jury after a trial in Launceston on 15 December 2020 of one count of committing an unlawful act intending to cause bodily harm by wounding with a knife. The jury acquitted you on the other count on the indictment alleging assault.

From the jury verdicts it may be accepted that in the early hours of 16 March 2019 at your premises at South Launceston, you woke from your sleep to find a guest in your home, the complainant, commencing to sexually assault your fiancé.

You responded to what you saw by throwing punches at the complainant. From its verdict on the assault count the jury must have considered that your actions in punching the complainant immediately after you observed what the complainant was then doing were taken in reasonable self-defence of your fiancé.

The jury, in convicting you on the second count on the indictment, must have considered your subsequent wounding of the complainant six times with a knife was not an action justified in the defence of your fiancé in the context of s 46 of the *Criminal Code*.

The complainant's stab wounds caused him to have a punctured lung. Shortly after the crime he made his way to the Launceston General Hospital and was treated. But for doing so he may have died. He spent four days in hospital. He did not claim to have any long term physical effects from the injuries.

The crime in question was a serious one. It is understandable that you responded with fists to take action to prevent a perceived sexual assault of a loved one. However, as you conceded at the trial, to take a knife and stab that person six times and cause serious injuries is to elevate one's response to a disproportionate level.

To satisfy the requirements of specific and general deterrence, denunciation and vindication of the victim, ordinarily a term of imprisonment would be appropriate for a crime of this sort. Your counsel has urged the Court to make a home detention order. Such an option is open to the Court under s 7(c) of the *Sentencing Act* 1997. Home detention is less onerous than prison, but there is no application of remission or parole provisions, and no portion of the detention period may be suspended.

Your counsel, Mr Tucker, submitted that the Court should make an order for 12 months' imprisonment, but wholly suspend it pending no further offending in the next two to three years. In the alternative, he submitted that a home detention order would be appropriate. The Court made an order for the provision of a home detention assessment report. The report was provided to the Court soon after its production on 19 January 2021.

The report refers to the fact that you come from a good, law abiding family and that your fiancé is fully supportive of you, including that you continue to reside with her. You have been in a stable relationship with her for eight years and have a 5 year old son together. You have no history of family violence. You are in full-time employment as a highly qualified chef and you have been continuously employed since 2019. Your employer will accommodate any restrictions imposed by the home detention order.

You have no history of alcohol abuse or drug use. You have no outstanding fines. You have no relevant criminal history. You are extremely remorseful. Your actions on 16 March 2019 were totally out of character. You have a very low risk of re-offending. You have been assessed as suitable for a home detention order.

I have considered the report as required by s 42AC(2)(b) of the *Sentencing Act*. Relying on the contents of the report and the circumstances relating to your offending on 16 March 2019, I consider it is appropriate to make an order for home detention. You consent to the making of that order. You will continue to reside at premises which I am satisfied are suitable for a home detention order. Your fiancé has consented to a home detention order being made in respect of you.

I agree with the recommendations contained in the report about the conditions referred to in s 42AD(1)(g) and (h) of the *Sentencing Act* concerning the conditions of your home detention order. I agree with the special conditions recommended in the report concerning your interaction with Community Corrections in Launceston and not taking any illicit or prohibited substances. I also agree that, in the circumstances, it is not necessary to make an additional order for community service supervised work.

I am satisfied that a conviction should be recorded. I consider that had the Court not made a home detention order, it would have sentenced you to a term of imprisonment in relation to the offence and most or all of that sentence may have been suspended.

In the circumstances, I impose a home detention order to commence today for a period of 12 months. The core conditions of the order are those contained in s 42AD(1) of the *Sentencing Act*, with the exception of subs (1)(j) which does not apply in the circumstances. I specify the home detention premises as [home detention premises].

The special conditions of the order are:

- (a) Immediately upon your release from Court you must attend Community Corrections at 111 Cameron Street, Launceston.
- (b) You must submit to the supervision of a Community Corrections officer as required by that officer.
- (c) You must not use any controlled substances as defined in the *Misuse of Drugs Act 2001*, or any medication containing an opiate, benzodiazepine, bupropion hydrochloride or pseudoephedrine unless you provide to a probation officer written evidence from your medical professional that you have been prescribed the relevant medication.
- (d) You must during the operational period of the order maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact through this device at all times.
- (e) You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.

In making this home detention order, I take into account:

- the seriousness of the offending;
- the circumstances of the offending;
- your lack of relevant prior convictions;
- your long-term stable employment and family relationships;
- your excellent prospects for rehabilitation given your age of 29 and that the offending was out of character;
- the impact of the offending on the victim (to be discussed in a moment).

The imposition of a home detention order brings home to you the significance of your actions on the night in question. A fully suspended custodial sentence, while a realistic option, is unlikely to remind you as much about the significance of your offending as a home detention order.

From the jury's verdict on the assault charge, the jury did not consider the complainant's version of what occurred before you punched him to be a truthful account. The jury appears not to have accepted that the complainant was having consensual sex with your fiancé when you saw him after coming into the lounge room from your bedroom. The complainant's victim impact statement should be treated with caution. He appears to have embellished the effect of the incident upon him in that statement. He referred to losing income because of medical and psychologist appointments and to being traumatised by the event. There was no indication of any such trauma, other than the pain involved in the injuries, when he gave his evidence. The complainant does not appear to have suffered any ongoing physical or mental effects from the incident that independent evidence verifies as impeding his ability to function effectively. For these reasons, little weight has been given to the victim impact statement.

For all the foregoing reasons, I consider that the interests of justice would be best served by the making of a home detention order for a duration of 12 months, commencing today. I convict you, Mr Crisp, and make an order for home detention with the conditions as outlined.