

STATE OF TASMANIA v JOHN EDWARD BAILEY
COMMENTS ON PASSING SENTENCE

2 FEBRUARY 2021
BRETT J

Mr Bailey, you have pleaded guilty to one count of assault and three summary counts of common assault. The assaults are all acts of family violence committed against your partner and children. They were committed during a series of events which occurred on 21 August 2018.

At that time, you and your partner lived at Clarendon with your four children. They are boys who were then aged 13 and 14, a girl aged 11 and another boy aged 8.

The events occurred at night, after your partner had returned with the two younger children from an event at the school. She had spent some time at the house of a friend and had consumed a considerable amount of alcohol. You also had been drinking alcohol for some hours, after an argument between you earlier in the day. You were both affected by alcohol at the time of these events.

The incident started with you angrily demanding that your partner tell you where she had been and why she had taken so long. Your eldest son defended his mother and demanded that you leave her and the family alone. You called him and your partner "cunts", and then grabbed your son tightly by the throat. He tackled you and this led to a physical struggle between you, during which you further assaulted him. The force used by you against him amounts to the summary offence of common assault.

Your son retreated, crying, to the bedroom he shared with the 13 year old child. You entered the bedroom and dragged the 13 year old from his bed, saying "You think you're a tough cunt". You then put your arms around his waist, squeezed him, lifted him up and dropped him. This constituted a common assault upon him.

The assault of your partner which constitutes the indictable crime is comprised of two separate acts. The first was committed immediately after you assaulted your second son. You went to your partner and pushed her head into a sliding door a couple of times and dropped her to the floor. These actions were witnessed by the 13 year old. Shortly after, you went to the kitchen where this child was seated on a chair and kicked the chair out from under him, causing him to fall to the ground. This constitutes a further act of common assault upon him. You then forcefully attacked the fridge in front of him, speaking in a threatening and frightening manner. Shortly after, while you turned your attention back to your partner, that child escaped from the house by jumping out of the bedroom and ran to his cousin's house to seek help. Needless to say, he was extremely distressed.

In the meantime, you continued your attack on your partner. This occurred in the hallway. You struck her over the head or to the body with a guitar, thereby smashing it. You either did this while she was on the ground or she fell to the ground as a result of this assault. The attack was witnessed by the 8-year-old child who saw her on the ground. The eldest child also heard noises consistent with this attack, heard his mother make noises consistent with being in pain, heard you yelling at her as you stood over her and then saw her injured and bleeding on the ground.

Police arrived shortly after and you were arrested. They saw the smashed guitar which had been broken in two and observed the three children distressed and comforting each other.

Your partner was taken by ambulance to the emergency department of the hospital. She sustained the following injuries as a result of your attack on her:

- (a) swelling and bruising around her left eye
- (b) a fracture to her skull
- (c) a 4 cm superficial open wound to her forehead
- (d) a large and deep open wound to the back of her head on the left side
- (e) a 1 cm open wound to the right lower lip
- (f) multiple bruises on her forearms, neck and back

The complainant has also provided an impact statement. Her references to her perception of the relationship generally are understandable and provide context, but you do not accept everything she says. In any event, you will not be sentenced for conduct other than that which constitutes the offences to which you have pleaded guilty. However, her description of the impact of the offending on both her and the children is directly relevant. She still experiences symptoms arising from the physical injuries suffered by her and describes the serious ongoing emotional impact on her and the children. These consequences are consistent with what would reasonably be expected as a result of a violent and unrestrained attack such as that perpetrated by you in this case.

You were 33 years of age at the time of this offending and you are now 36. You have prior convictions but they relate exclusively to traffic offending. They include a number of drink-driving convictions. You have no prior history for acts of violence, including family violence. It would seem that you have had a long-standing problem with the use of alcohol. You were intoxicated during the commission of these crimes. You are not entitled to any mitigation for that reason, but it is relevant that you have made a serious attempt to address this issue since the crimes were committed. In particular, you have attended a course and further individual counselling with an appropriate organisation, and it would seem that you are still seeking assistance from your medical practitioner. I accept that you have made a genuine attempt to address your problem with alcohol, and this shows a commendable degree of insight into one of the underlying causes of your offending.

On the other hand, although I think you have experienced a degree of remorse generally, I do not see any evidence of insight in respect of the violence itself. You have pleaded guilty and this will be taken into account in your favour, as demonstrating a willingness to co-operate with the administration of justice. This, of course, has the practical benefit that the complainant and your children will be spared the ordeal of having to give evidence in a trial. However, the plea was not indicated or entered at an early time and, in my view, is not a consequence of true remorse. Further, comments made by you to the author of the pre-sentence report indicate a lack of insight into the seriousness of your conduct and its impact on the complainant and your children.

The most important sentencing considerations in this case are general deterrence, denunciation of such conduct and vindication of the victims. Your criminal behaviour is aggravated to a significant extent by the fact that you perpetrated the violence against your partner in the presence of your children and also assaulted two of them. The violence was brutal and dangerous and, at least in respect of your partner, resulted in serious injury. You accompanied the assaults on your sons with demeaning and belittling comments. Your actions constitute a grave breach of trust towards the other members of your family. Family violence of this nature

is of great concern to the community and deserves condemnation. It will inevitably result in significant punishment.

A final consideration is this. You have, since committing the crime, been diagnosed with late onset type I diabetes. Medical evidence confirms that there is a need for this condition to be "well-controlled" and that if it is not then this will have significant long-standing consequences for your health. There is no evidence before me to suggest that the condition cannot be appropriately treated during incarceration, but I accept that in general terms it is a factor which will make your experience of prison more difficult than would otherwise be the case. I will take this consideration into account in a general way.

The only appropriate sentence in this case is a substantial sentence of imprisonment. I have considered the option of home detention but I note, gratefully, the submissions made by prosecuting counsel this afternoon to the effect that that would not seem to be an available option, having regard to prohibitions contained in the *Sentencing Act*. In any event, it seems to me that such a penalty does not constitute an appropriate response to offending of this seriousness. However, although I intend to impose a sentence of imprisonment, I will suspend part of it to acknowledge your plea of guilty, your lack of prior history for violent offending, and with a view to encouraging and providing support for your rehabilitation. I accept that you have demonstrated a genuine commitment to at least overcoming your problems with alcohol. Further, it is significant that you have not done something like this before or since. Accordingly, I think that rehabilitation also has an important role to play in the formulation of sentence. The pre-sentence report indicates a need for ongoing supervision and this can be facilitated by suspension of sentence.

Accordingly, the orders I make are as follows:

- 1 You are convicted of the crime and the offences to which you have pleaded guilty.
- 2 You are sentenced to a global term of two years and 3 months' imprisonment, which will be backdated to the 15 September 2020, to take account of time that you have already spent in custody. The final 15 months of the sentence will be suspended for a period of 2 years on the following conditions:
 - (a) That you are not to commit another offence punishable by imprisonment during that period.
 - (b) That you will be subject to the supervision of a probation officer. You must comply with this condition for a period of 2 years. That period will commence from when you lawfully cease to be imprisoned under this sentence. 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 the day that you lawfully cease to be imprisoned under the sentence. In addition to the core conditions the order shall also include the following special conditions:
 - (a) 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 Family Violence Offender Intervention program as directed by a probation officer.
- (b) You are not eligible for parole in respect of the operative sentence, that is the 12 month period of the sentence.

I direct, pursuant to s 13A of the *Family Violence Act* that the indictable crime of assault be recorded on your criminal record as a family violence offence.