

Mr Bell, you have pleaded guilty to one count of wounding.

You committed the crime on 28 September 2019. It was committed against your uncle, a man aged 54 years. He has been diagnosed as having an intellectual disability.

To put the crime in its proper context, it is necessary to say something about your background and the lead up to this day. You were born in 1978. You are one of four children. You were brought up by your mother and had little contact with your biological father. It seems that your mother partnered more than once during your childhood, so you had some stepfathers in your life. You spent some time in your early teenage years in foster care. In adult life, you have had some relationships and have four children aged 21, 19, 16 and 6. In 2001, you were the driver of a motor vehicle involved a serious accident in which the mother of your two oldest children and another woman died. You were sentenced to an actual term of imprisonment in 2005 for two counts of causing death by negligent driving, arising from this accident. You otherwise have a criminal history that goes back some years. It does contain some prior offences of violence, but the last of these is well over 20 years old. It seems that over the years you have maintained some employment, but I have not been given a great deal of information about this.

According to the psychiatric report prepared by Dr Jordan, you have had longstanding issues with your mental health. In 2009, you were diagnosed with schizophrenia. You received some treatment then, but this did not continue on a consistent basis. You told Dr Jordan that your mental health has "waxed and waned over the last decade", but he could find no evidence of further hospital admissions prior to the commission of this crime. At Easter last year, you became homeless and this coincided with a deterioration in your mental state. As time went on, you started to become increasingly preoccupied with a belief that you had been sexually assaulted by the complainant, and that this sexual assault had been instigated by his sister, your aunt, when you were 5 years of age. As I understand it, there is no suggestion that there is any truth to this belief, and Dr Jordan believes that it should be interpreted as a paranoid and psychotic idea, arising from the relapse of the schizophrenia.

On the day of the crime, you contacted the complainant and his sister, and arranged to meet them at New Norfolk. They were attending the markets there. You were still homeless and had been living in a tent, and then your car, for some time. You were hoping to use your uncle and aunt's house for a shower, to wash your clothes and even stay for a time. You drove to New Norfolk, met them there, spent some time with them and then drove them back to Hobart. On the way, traffic was diverted around an accident, and you ended up at the Berriedale waterfront. During that journey, you accused the complainant of the sexual assault. He denied your allegations. Upon reaching the waterfront, you parked the car and left him and your aunt in the vehicle while you went for a walk. When you returned, you drove to a location near the Glenorchy Bowls Club. Your uncle was sitting in the back seat, and your aunt in the front passenger seat. When you reached your destination, you parked the vehicle and confronted the complainant again. At some point, he had said something to you, which, in your mind, and in the context of your disordered thinking, had confirmed to you his knowledge and his memory of what you believed he had done to you. In other words, you considered that what he had said was in fact an admission that he had committed this act against you. This enraged you. You then produced a knife from the side of your seat, turned around and stabbed him in the chest, left side, left forearm and right forearm. He got out of the vehicle to escape from you. You

followed him and attempted to stab him again, but missed. Your aunt pleaded with you to stop. You then got back in your vehicle and drove away.

As I indicated during argument, I will proceed on the basis that you did not premeditate the knife attack. You had clearly thought for some time about confronting your uncle, and decided to do this during the journey. However, your decision to stab him was made spontaneously when he answered a question in a way that you took to indicate some knowledge of what had happened. As I indicated earlier, this confirmed in your mind that the memories were true. The knife was one of several in the car. They were there because you were living in the car, and used the knives for fishing. The presence of the knife was coincidental and innocent.

Considered objectively, this is a very serious example of the crime of wounding. There are a number of aggravating features. The prosecution has asserted, and it is not contested by your counsel and it is obvious in any event, that, although formed spontaneously, your intention was to wound the complainant. The attack was violent and sustained. Further, it was unexpected by the complainant and occurred in circumstances in which he was entitled to expect and trust that he would be safe in your company. He was in a car when you attacked him and hence vulnerable because of his physical confinement arising from that circumstance. You stabbed him four times, including on two occasions to the upper body in places in which such actions were extremely dangerous. You caused serious injury and the consequences could easily have been far worse. When the complainant tried to escape, you ran after him and tried to attack him again. Finally, when you had finished attacking him, you drove off and left him, without any apparent thought concerning his welfare, notwithstanding that he was clearly injured as a result of your actions. I acknowledge, of course, that your aunt was left with him when you left.

The complainant was taken by ambulance to hospital and admitted in critical condition. He suffered four wounds in the places where he had been stabbed, and some grazing to his head. He underwent emergency life-saving surgery in order to repair a laceration to his diaphragm suffered as a result of one of the stabbings. I have received an impact statement from the complainant. He expresses his shock, sadness and disappointment that you, someone he claims to have loved, would do this to him. It is obvious from the statement that he was well aware that his life was in danger. Understandably, he suffers ongoing anxiety as a result of this attack.

In terms of mitigation, I think the predominant consideration is your mental state at the time you committed this crime. It is clear from Dr Jordan's report that you were suffering from mental illness at the relevant time. In particular, you were suffering from schizophrenia, which had resulted in the psychotic symptoms. The psychosis manifested in the "paranoid psychotic ideas" concerning the perpetration of the sexual abuse in your early childhood. This clearly provided the motivation for your conduct.

The question which then arises is the way in which and the extent to which this impaired mental functioning is relevant to the assessment of sentence. In particular, does the fact that you had formed a psychotic and paranoid belief that you had been sexually assaulted by the complainant in childhood, reduce your moral culpability for the crime, or reduce the need for general or specific deterrence? As I indicated earlier, there is no evidence in Dr Jordan's report to suggest that the psychosis was such as to reduce your moral culpability for actually stabbing your uncle. The principles set out in *Verdins* require the existence of a realistic connection or causal link between the impaired mental functioning and the criminal conduct, before mental illness can be taken into account in this way. However, as I have also indicated, having heard Dr Jordan's oral evidence, I am satisfied that the mental illness from which you were suffering did impair

you capacity to exercise judgment and make decisions, and fully appreciate the criminal wrong that you were committing. It certainly provided, in one sense, a logical motivation for the crime, but in another sense, I think that that surrounding effect of the mental illness, means that it does have a realistic connection or causal link to the criminal conduct. I think it is unlikely that you would have acted in this way had you not been in an impaired mental state, even if you had truly believed that he had committed this act against you. Of course, your mental state does not completely relieve your moral culpability. You were clearly acting to seek retribution. You were clearly exercising considerable and sustained violence, and all of the other aggravating features are still applicable. It is difficult to disentangle these aspects, but I think that I should have regard to the mental illness in the way suggested in the first three limbs of *Verdins*, at least in reducing your moral culpability and reducing the need for general deterrence. Specific deterrence is probably a different question. Specific deterrence requires consideration of your reaction should you suffer a further bout of mental illness, and how you would act in that situation. I think specific deterrence has a role to play. But that should also be informed by the insight you have shown and the steps you have taken to undertake treatment for your mental illness and ongoing treatment in the community which I understand had been relatively successful, and that you are consistently undertaking at the moment.

In that regard, I note that after your arrest for this crime, you were held in custody on remand for approximately six months before being released on bail. During that time, you were hospitalised because of ongoing psychotic symptoms. The material I have been provided with suggests that, after your release, you were for a time made subject to a treatment order under the *Mental Health Act*. The material provided to me supports the proposition that you currently have good insight into your condition and the need for medication, and you are having regular contact with your general practitioner and a mental health case manager. You receive a regular injection of antipsychotic medication every three months, and I am asked to conclude that there is a good prospect that you will voluntarily continue this treatment. I think that this is the case.

There is no question that the objective seriousness of the crime does require the imposition of a sentence of imprisonment. You have already spent six months in prison. I think you should be given an opportunity to avoid returning to prison, and to continue with your treatment in the community. Were it not for the mitigatory effect of the mental illness, you would certainly be returning to prison, probably for a significant period of time. I intend to modify the head sentence, and to backdate that sentence to a point in time which reflects the time that you have spent in custody, and then to suspend the balance of the sentence from today for a relatively lengthy period. I will make the suspension of sentence subject to the usual condition about not committing any further crime and ongoing probation supervision.

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 two years' imprisonment, which will be backdated to 22 August 2020. The balance of the sentence from now will be suspended for a period of two 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 two years. 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 three clear days of today. In addition to the core conditions, the order shall also include the following special conditions:

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) submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.