

STATE OF TASMANIA v JUSTIN KEVIN PEARCE
COMMENTS ON PASSING SENTENCE

4 MARCH 2021
BLOW CJ

Last year on the afternoon of 27 May Mr Pearce went to his father's home in Bridgewater, argued with him, and attacked him. In relation to that incident he has pleaded guilty to two charges under the *Criminal Code* and to seven summary offences that I will deal with under s 385A of the Code.

Six days earlier, on 21 May, he punched his father to the face, was arrested, and was charged under the *Police Offences Act 1935* with assault. On the next day, 22 May, a magistrate made a restraint order for the protection of his father. That order required Mr Pearce not to enter his father's property or go within 50 metres of it, not to assault his father, and not to destroy his father's property. He was granted bail on that first assault charge. There were bail conditions that required him to comply with the restraint order, reside at his mother's address in Hadspen, and not travel south of Oatlands except for court appearances. Mr Pearce has an intellectual disability. He has an IQ of 55. He is 32 years old. He has a history of alcohol and drug problems. He arrived at his father's home at about 5.30pm on 27 May. He said he had had an argument with his mother and could no longer stay with her. He has pleaded guilty to breaching the restraint order by entering his father's premises, to breaching his bail conditions by doing that, and to breaching his bail conditions by going south of Oatlands.

He asked his father for permission to stay in a caravan in the back yard. His father told him that he was not allowed to be at the house and could not stay there. That response angered him. He grabbed a full beer bottle and hit his father to the head with it. His father was sitting in his lounge room at the time. The bottle smashed on impact with his father's head. His father said that he was going to call the police, but Mr Pearce grabbed his father's mobile phone and smashed it. He has pleaded guilty to a charge of destroying property, and to a charge of breaching the restraint order by smashing the phone. Next, he picked up another full beer bottle and smashed it on his father's head.

His father requires the use of a walking frame. He got up and tried to leave the house, but was unable to get to his walking frame. As he was trying to move away, Mr Pearce picked up a screwdriver, followed his father, and stabbed him multiple times to the back with it.

His father got to the front door, stumbled, and fell to the ground. Mr Pearce stood over him with his foot on his thigh, and stabbed him multiple times to the back and head with a pair of scissors.

Mr Pearce has pleaded guilty to assaulting his father by smashing the two bottles over his head and pushing him, and to unlawfully wounding him by stabbing him with the screwdriver and the scissors. He has pleaded guilty to breaching the restraint order by smashing the bottles over his father's head and stabbing him multiple times.

The violence ceased as a result of the father's dog attacking Mr Pearce and causing him to fall over. A neighbour heard the father calling for help, came to his aid, and struck Mr Pearce to the head with a metal pole. Mr Pearce fled, was arrested later that night, and has been in custody ever since.

His father was taken to hospital by ambulance, spent the night there, and was discharged the next day. He suffered nine small puncture wounds to his back, various lacerations or wounds

to the top of his head, and cuts and grazes to his body. Dressings were applied to his wounds at the hospital, and he was given antibiotics. His wounds were treated by nurses over the next several weeks. Because of his limited mobility, the injuries greatly restricted his ability to carry out normal daily tasks at that stage. The emotional effect on him was more significant than his physical injuries. He suffered increased feelings of depression, fear and irritability. He received medical treatment for those symptoms, with little success. He fears that he might be attacked by his son in his home again.

Mr Pearce has a number of prior convictions for serious crimes of violence. In August 2013 he stabbed his brother twice to the back with a knife, causing a collapsed lung. He pleaded guilty to causing grievous bodily harm and was given a wholly suspended sentence of 12 months' imprisonment. During a drunken episode in March 2017 he assaulted his father three times, smashed two windows, and damaged his motor vehicle. A magistrate gave him a wholly suspended sentence of six weeks' imprisonment. Two days after that incident he assaulted two police officers at his mother's home by threatening to stab them with a knife. He was subsequently sentenced to six months' imprisonment for that crime. In October 2017, while he was on bail on the charge of assaulting police, he stabbed a friend of his father's in the back with a large hunting knife at his father's home. He pleaded guilty to a charge of wounding and was sentenced to 21 months' imprisonment, with a non-parole period of 12 months and 2 weeks.

There were other relevant incidents last year before the one that I am now concerned with. In March a magistrate made an interim restraint order which prohibited Mr Pearce from going to his father's home. He breached that order on 3 May and was arrested. The next day he pleaded guilty to a charge of breaching the interim restraint order. A magistrate gave him a wholly suspended sentence of one month's imprisonment. He breached the interim restraint order again on 14 May. A magistrate subsequently activated the one-month suspended sentence, with effect from 29 May and sentenced him to two months' imprisonment, cumulatively, in respect of breaches of the interim restraint order on 14 May, and the assault on 21 May.

Thus Mr Pearce has spent three months serving sentences since being taken into custody on 27 May. I will therefore impose a sentence that is backdated to 27 August. In accordance with the totality principle, I will take into account the fact that the sentence imposed today is additional to a total of three months' imprisonment on those other charges.

Counsel for Mr Pearce told me that on the day in question his mother dropped him at his father's home, and that he believed he had nowhere else to go. He had been using alcohol and methylamphetamine every day, and was intoxicated when he arrived. He got upset when his father told him that he was not allowed to be there, and got more upset when his father decided to phone the police. He now accepts that he was not allowed to be there. He is sorry for attacking his father. He has had contact with his father while he has been in custody, and believes that they now have a more positive relationship.

He is illiterate and has never held any employment. However he has been cleaning the prison hospital and cleaning cells, and has decided that he would like to obtain work as a cleaner once he is released. He has undertaken drug and alcohol courses in the past, both inside and outside the prison environment, but without much success. An experienced forensic psychiatrist has reported that there is no evidence of him ever being assessed for participation in the National Disability Insurance Scheme, and that it would be desirable for support from that scheme to be arranged for him while he remains in custody.

Because of Mr Pearce's intellectual disability, there is no reason to think that a heavy prison sentence might deter him from future offending. He tends to react with aggression and violence when he gets upset, particularly when under the influence of alcohol and/or drugs. Efforts to overcome his alcohol and drug problems in the past have been unsuccessful. I think there must be a very high risk that he will commit more crimes of violence in the future. Suspended sentences have not deterred him from re-offending in the past, and are unlikely to do so in the future. In the circumstances, I think the most appropriate course is for me to impose a prison sentence and to make provision for Mr Pearce to be supervised by a probation officer for two years after his release from prison. If I take that course, s 17(2A) of the *Sentencing Act* 1997 prevents me from making provision for parole. I am taking that into account in fixing the length of the sentence. I regret that I did not order a report as to Mr Pearce's suitability for supervised probation when this matter was last before me. Rather than delaying his sentencing any longer, I have decided to make a community correction order without obtaining the usual report.

Justin Kevin Pearce, I convict you on all charges. As a global penalty, I sentence you to 10 months' imprisonment with effect from 27 August 2020. I make a community correction order, for an operational period of two years commencing when you lawfully cease to be imprisoned under a sentence of imprisonment that has not been wholly suspended, with special conditions that, during that period:

- You must submit to the supervision of a probation officer as required by the probation officer.
- You must attend programs as directed by a probation officer.
- You must undergo assessment and treatment for drug dependency as directed by a probation officer.
- You must submit to testing for drug use as directed by a probation officer.
- You must undergo assessment and treatment for alcohol dependency as directed by a probation officer.
- You must submit to testing for alcohol use as directed by a probation officer.