

Mr Cook, the defendant, has been found guilty by a unanimous verdict of the jury of one count of causing grievous bodily harm. This crime was committed on 10 February 2020; the victim was the defendant's uncle, Reginald Cowen. Mr Cowen had been living with the defendant and his partner, Ms Devine, for a few months. It seems Mr Cowen had been prone to homelessness and the defendant provided him with accommodation in a shed at his home. On Mr Cowen's own admission, he was prone to engaging in bouts of heavy drinking. In the few days before the incident, the relationship with Mr Cowen had not been a good one. Mr Cowen had been away for a short time staying with a friend before returning. Mr Cowen's evidence was to the effect that Ms Devine had telephoned him, told him that things had cooled down, or that he – the defendant – had cooled down, and he could come back. There is no reason to reject that evidence. When he went back, the defendant was asleep on a mattress in the lounge room. After a short time, an argument began. Again, there is no real reason to doubt Mr Cowen's evidence that it was about money. I infer that money was due or expected from him. During the argument he was called a liar. I think it is reasonably possible that the argument at least involved Ms Devine and may be started with her, and that the defendant then became involved. I accept that it is reasonably possible that Mr Cowen was abusive to both. I find that the defendant picked up a chainsaw with which to threaten Mr Cowen, but it failed to start, shortly after which the defendant grabbed a baseball bat which happened to be close by, and hit Mr Cowen once to the top of his head. Mr Cowen was immediately felled. He was bleeding heavily from a cut to the top of his head but made his own way out of the house to a friend's place nearby in order to gain assistance. An ambulance was called and police attended. On examination at the hospital. Mr Cowen was conscious and alert but slightly confused. The blow was found to have caused an extensive single linear skull fracture from just above the right eye, over the skull to its base. There was also a small right frontal haemorrhage under the skull which resolved without surgery. The wound was treated and stapled, but later became infected. Mr Cowen was in hospital for about a fortnight. The medical evidence established that the blow was of significant force, consistent with a single blow. At this time, Mr Cowen has made a good recovery which accords with the prognosis. In his victim impact statement, Mr Cowen says the immediate pain was intense. He still suffers from periodic serious headaches, and he complains of short term memory loss. He feels emotionally hurt that his nephew would do such a thing.

The defendant is now 34 years old. He has a record of offending including crimes of violence. Leaving aside some youth matters, in August 2008 he was sentenced by a judge of this Court to five years' imprisonment with a non-parole period of 3½ years, for two counts of rape, one count of attempted rape, an indecent assault, wounding and two counts of assault. In April 2009, for offences of arson and injuring property committed in 2006, he was sentenced to 18 months' imprisonment cumulative with a non-parole period of one year. From 2014 he has continued to offend but on a much lower level. He has been dealt with for offences of dishonesty, for traffic offences and for a number of instances of failing to comply with his reporting obligations in respect of an order made in August 2008. In May 2020 he was sentenced to a total of five months' imprisonment for offences going back to 2017-2018. He was initially remanded in custody on this matter before being sentenced, and was later released on bail when greater delays in trials arose because of the pandemic. His counsel submitted the delay meant he re-established his life after release and now faces custody again. He has spent 17 days in custody attributable to this matter. The difficulties the defendant experienced during his upbringing are documented in the comments on passing sentence made in August 2008 and in April 2009. His upbringing was brutal and disrupted. He has not met his biological father.

His mother was addicted to drugs, was frequently unable to care for him, and she was often physically violent to him to an extent that on about two occasions he needed medical treatment. Not surprisingly, as a consequence he has suffered serious and long-lasting emotional trauma. Presently, his relationship with Ms Devine is a long-term and stable one. They have two children. I take into account those personal circumstances. I take into account the general improvement in the defendant's behaviour over recent years. Perhaps leaving aside driving whilst disqualified there is no record of serious offending since 2009, recognising of course the time spent in prison. He has no recorded offending for about 18 months before this incident apart from two breaches of bail in March 2019. Based on what I made of Mr Cowen's evidence in cross-examination, I think it is probable that in the argument Mr Cowen was quite frustrating and abusive. Of course that provides no excuse whatsoever but it is relevant in the sense that I am not satisfied that the response was anything other than relatively spontaneous. Self-defence was left to the jury because of Mr Cowen's rather equivocal evidence of some form of verbal threat made by him, and suggestions made to him that he had, in unspecified ways, been violent and abusive. I was not asked to sentence the defendant on the basis that the jury's verdict was based on a finding of unreasonable force in self-defence, and I do not do so. The resort to violence was completely unnecessary. Mr Cowen presented as a man of some vulnerability. He was 62 years old at the time. A significant blow to the top of the head with an object such as a baseball bat is a very serious matter. The question of intention was not argued and I am prepared to accept that the defendant was reckless as to whether grievous bodily harm would be caused or not. Having said that however, the degree of recklessness involved in such an act is so high that the distinction as to the mental state has no real significance. It was a very dangerous thing to do. Attempting to deter others from similar conduct is an important factor.

Mr Cook, I have set out the facts and what I see to be the relevant factors in your case. Although a single blow it was delivered, in anger, to the top of the skull with significant force. It is very fortunate that Mr Cowen was not more seriously injured. Despite the fact that it was not a sustained attack and that Mr Cowen has recovered well, the conduct has to be viewed seriously. A term of imprisonment is necessary. I am prepared to see this as an isolated incident and not a continuation of your earlier capacity for violent behaviour. Your personal circumstances as I have outlined them justify a degree of leniency. You are convicted of the crime and sentenced to 18 months' imprisonment to commence on 14 March 2021, the execution of three months of which is suspended on condition you commit no offence punishable by imprisonment for a period of two years. I order that you not be eligible for parole until you have served one half of the operative part of the term.