

JSS, you plead guilty to persistent family violence. Until January 2020 you were in a relationship with the complainant for about six years. You had one child together born in 2015 when the complainant was 24 and you were 27. When you were arrested in January 2020 the complainant was pregnant with your second child. The complainant is now 30 and you are 33.

The crime of persistent family violence is committed when a person commits an unlawful family violence act against his or her spouse or partner on at least three occasions. Any offence involving family violence is an unlawful family violence act. In this case, five specific occasions are identified.

Since late 2015, tension in the relationship led to you sleeping in separate beds. The first identified occasion occurred in mid-2016. The complainant woke at about 3.30 am to you being on top of her in her bed, having masturbated onto her legs and underpants. That was an indecent assault. The next identified occasion did not occur until more than three years later, in late 2019. It is to be considered in light of the fact that on 12 December 2019 a police family violence order had been served on you with a condition that you not go to the house in which the complainant was living. Despite the terms of the order you continued to live in the house. On 22 December 2019 you indecently assaulted her by, without her consent, grabbing her breast under her bra. When she confronted you about it you replied that you knew that if you asked she would say no. Later in the same month you attempted to hug her in the bedroom. When she tried to move away you grabbed her leg and pulled her to the ground. That is an assault and is the third specified unlawful family violence act. She suffered some bruising as a result. Later the same day you laughed about the incident and threatened to kill the family dog because the complainant hadn't done the washing up. That conversation was recorded by her.

The fourth identified occasion occurred on 6 January 2020. Again it was recorded by the complainant. You became angry and argued with her. In the course of the argument you talked of the use of a .44 magnum revolver against her. Later in the same day you yelled vile abuse at her, calling her a "piece of shit" and a "fucking filthy dog." You threatened to kill her if you went to prison, and suggested she lie about her evidence. You made a further thinly veiled threat the effect of which was that you would kill her and dispose of her body. The threats you were made were so frightening for the complainant that she lost control of her bladder and wet herself. Your acts amounted to the offence under the *Family Violence Act* of emotional abuse or intimidation.

The final specified unlawful family violence act occurred two days later, on 8 January 2020. You had been drinking with a neighbour and become aggressive towards the complainant. She was in bed by the time you came home. She pretended to be asleep, but you rubbed her buttocks, and put your hand inside her underpants and moved your fingers towards her vagina, onto her genitalia. She did not consent and kicked you away. Your conduct constituted an indecent assault.

When the complainant failed to attend an appointment on 10 January 2020 the alarm was raised. The police learned that you had been living with the complainant in breach of the order and you were arrested.

Your criminal record is mostly for driving related offences. However, in South Australia in 2010 you were fined for two counts of an offence noted as aggravated assault against a child or spouse.

On those occasions the force you used was confined to pushing away your partner in the course of a relationship separation. The record of prior convictions note an agreed fact that the assault was by way of a push. In the following year, 2011, you were fined for ill-treating an animal.

This sentencing hearing commenced in December 2020. Since then I have obtained two reports. The first is an assessment of your suitability for home detention. The second is prepared by Dr Anthony Fernando, a consultant forensic psychiatrist. Both reports outline your personal circumstances, also referred to by your counsel. You were brought up in South Australia but your home life was not a stable one. You claim that you and your mother were both subject to abuse by your father and, after they separated, other subsequent partners. You left school at 16 and have fended for yourself since then, with employment in various industries. You met the complainant about 11 years ago and moved to Tasmania to live with her. You have two children together aged about five and one. You are separated from the complainant but have limited contact with the children. You have some history of mental health issues which Dr Fernando describes as emotional lability. He concludes that the presentation hints at mood disorder, but the exact nature of the condition remains unclear. Your mental health is complicated by significant addiction issues over the years involving alcohol and opiate pain killers which make diagnosis and treatment of mood disorders difficult. You claim now to be abstinent from alcohol and prescription drugs. Dr Fernando concludes however that you do not, and did not at the time of the offence, suffer from any condition which impacted your moral culpability and none of the *Verdins* factors apply to you.

Since these offences you have however suffered serious physical injuries in a fall. The injuries for a time confined you to a wheel chair but you are slowly recovering and regaining mobility.

None of the unlawful acts which go to make up the crime to which you have pleaded guilty involve serious violence. Viewed in isolation, the indecent assaults do not involve serious criminality. However the individual specified acts are not to be viewed in isolation. As it did in this case, family violence commonly occurs in private and in various forms. Your conduct is to be viewed in the context of ongoing emotional abuse, controlling conduct and intimidation. You abused the trust inherent in domestic relationships. Your conduct was frightening, demeaning and humiliating. The fact that the complainant, by late 2020, perceived the need to make recordings as evidence is a strong indication of how frightened she was and she feared that, without the recordings, she would not be believed. An aspect of your threatening behaviour was designed to prevent her from maintaining her account and so make prosecution more difficult. Victims of family violence in her position are vulnerable to abuse and often experience feelings of powerlessness. For those reasons general deterrence, punishment, vindication of the victim and specific deterrence are the overwhelming sentencing considerations. I would have imposed a sentence of imprisonment. However I think that, in the circumstances of your case, a home detention order is the appropriate sentence. You have already spent about two months in custody. Home detention contains an element of punishment, but will also allow the probation officers to address, by programs and services including the family violence offender intervention program and an addiction program, the factors which lead to the risk of future violence.

JS, you are convicted. In accordance with the *Family Violence Act* 2004, s 13A, I direct that the crime be recorded on your criminal record as a family violence offence. I will make a family violence order to protect the complainant and the two children. The term of the order will be a further two years. It will be in terms equivalent to those contained in the order made on 17 June 2020 but the passage of time has made some of those orders no longer appropriate. I invite the parties to formulate the terms of the order proposed and adjourn that application for the order to

a date to be fixed. I make a home detention order. The operative period of the order is 12 months from today. I specify the premises at which you are to reside during the operational period of the order as [home detention premises]. I order that immediately upon your leaving Court you report to the office of Community Corrections at Burnie, for induction into this order, and a further explanation as to its full terms. The order will be subject to all of the core conditions set out in the *Sentencing Act* 1997, s 42AD(1). They will be set out in the order that you will be given, but include that you will submit to electronic monitoring and must, during the operational period of the order, if directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of an illicit drug. I specify that you must be at the home detention premises at all times unless for a relevant reason. In short, that means that you must be at those premises unless there is a need for urgent medical treatment, there is a serious risk of death or injury, or you already have the approval of a probation officer to be absent. It will be for the probation officer to determine what to approve so as to allow for treatment or rehabilitation, contact with your children or for any other purpose. The conditions will include that you not commit another offence punishable by imprisonment and that you comply with all directions given to you by your probation officer. I impose special conditions that:

- you must submit to the supervision of a probation officer as required by that officer;
- you must not take any illicit or prohibited substances. Illicit and prohibited substances include any controlled drug as defined by the *Misuse of Drugs Act* 2001, and any medication containing an opiate, benzodiazepine, bupropion, hydrochloride or pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication;
- you must submit to any rehabilitation or treatment program, including the Family Violence Offender Intervention Program and the EQUIPS Addiction Program, as directed by a probation officer;
- you must not, during the operational period of the order, consume alcohol, and you must, if directed to do so by a police officer or Community Corrections officer, submit to a breath test, urine test, or other test, for the presence of alcohol;
- you must submit to a medical, psychological, psychiatric or physical or mental health assessment or treatment as directed by a probation officer;
- you must maintain an active mobile phone service, provide the contact details to Community Corrections and be contactable at all times.

This order comes into effect immediately. You must understand that if you do not comply with the conditions, imprisonment is likely. If you breach the order by committing another offence, the order must be cancelled unless there are exceptional circumstances, and in that case imprisonment would be highly likely.