

STATE OF TASMANIA v JACOB KUBA IWASZEK
COMMENTS ON PASSING SENTENCE

21 MAY 2021
GEASON J

Mr Iwaszek you appear for sentence upon your plea of guilty to a charge of assault contrary to s 184 of the *Criminal Code*.

Additionally I am dealing with a charge of common assault under the *Police Offences Act*, and I am doing so pursuant to s 385A of the *Criminal Code* upon your request that I do so, and your plea of guilty to that charge.

Both offences arise from a single episode on 6 June 2020 when you committed assaults upon your mother.

At the time of committing this offence you were 24 years of age. Your mother was 59 years of age. You lived with her and your father at an address in Moonah.

In the afternoon of 6 June you were playing on your Playstation in the lounge room. Your mother was mopping the floor. She asked you to look at some marks you had caused when you kicked a table while playing video games. This angered you. You stood up and punched her to her back, and did so with such significant force that she fell to the ground. She asked you not to punch her. You lent over her and punched her again, this time to the forehead. The punch was delivered with significant force.

Your mother called out to your father but he was in the downstairs area of the residence and unable to hear her. You walked into the kitchen and opened the cutlery drawer, removing a large sharp knife. Your mother followed you and asked you what you were doing. You held the knife out her pointing it towards her stomach. She was within a metre of you and could not get away from you. She asked you "do you want to kill me", to which you responded "yes", before you returned the knife to the drawer. Your mother told you that she was going to call the police. You said she could not do so and you ran to your bedroom.

When your father returned to the lounge room, he found your mother crying. She told him what had happened. He went to the bedroom and found you under your bed. He asked you to come out but you refused. He called the police. When police attended, they found you hiding under your bed. You refused to come out saying "I don't want you to arrest me". After about a minute you complied with their request. You said that you had been arguing with your mother because she never gave you freedom and you punched her because she would not trust you.

You were arrested and conveyed to Glenorchy Police Station.

In a video record of interview you acknowledged that you and your parents got along poorly and that you argued with them frequently. You admitted that you struck your mother hard and said that this was out of anger. You described the force of your punch, on a scale of 1-10, as being a 10, that is as hard as you could hit her. You acknowledged that your mother fell to the ground and you said that you were angry because your mother does not give you any peace. You admitted hitting your mother twice on the back and to the forehead and said you were furious when you punched her the second time, again describing the punching as a 10 on a scale of 1-10.

You agreed that you had removed a knife from the kitchen drawer and held it towards your mother, stating that you were planning to kill her when you were holding it. You said you put the knife back in the drawer when your mother asked you to, and you then ran to your room.

You told police that you had hit your mother before, though of course that episode is not the subject of the charges before me. You said you were sorry for what you had done and for the hurt you had caused your parents and that you regretted it all.

Your mother sustained injuries as a consequence of your conduct. A chest x-ray confirmed a broken rib, and as a result to the punch to her head, she suffered swelling and bruising to the right side of her forehead and eyebrow region. She was prescribed strong pain medication and her injuries were left to heal over time.

I have read her victim impact statement.

I note that, in addition to describing the shock and hurt she sustained in consequence of your conduct, she says that you are mostly a good boy who tries to help her. It is recorded that you are not at home, and that you are paying money to reside at the home of a family friend, but that you return to spend time with your parents each day, to help them with jobs and to eat.

The overwhelming force of that statement is one of significant hurt in consequence of your conduct, a sense of shame because the Polish community to which you all belong, is small and close-knit – and of a mother's forgiveness.

You appear before me without prior convictions.

I have received a comprehensive plea in mitigation on your behalf, as well as a psychological assessment from Dr O'Donnell. You are your parents only child, and you were educated in Hobart to grade 12. You had a job in a confectionary factory for 15 hours per week, but when that factory closed your employment ceased. I accept that you derived a great deal of personal satisfaction from your work and that it provided you with some relief from a life otherwise spent predominantly at home. You have been diagnosed as autistic, and that condition gives rise to work limitations. You receive a disability support pension.

Upon the cessation of that employment you spent a lot of time using the Playstation and this appears to have given rise to tensions at home. Apparently you become very involved in those games and become enraged when you are interrupted. This is considered to be consistent with the fixated interest that individuals with autism can develop, and I am told that the attention applied to such interests can be obsessional in nature.

Whilst you have never had many friends, you have played cricket at the Glenorchy Cricket Club in third grade for about 15 years, though you do not socialise with club mates outside of specific club events.

You have attended a psychologist for anger management issues, and you have attended five sessions for that purpose, but no further sessions have been recommended by that psychologist. You are not prescribed any medication.

Returning to Dr O'Donnell's report, she has expressed the opinion that your autism spectrum disorder has the effect of reducing your ability to effectively problem solve, regulate emotion

and cope effectively in situations of inter-personal stress. She suggests that, rather than being able to use a variety of psychological strategies to calm your emotional state and regulate your behaviour, you may use aggression when you feel your needs are not being met, or perceive that you have been treated in a way you do not like. She opines that the condition impairs your ability to exercise appropriate judgment, and that the Court should have regard to that in terms of assessing the moral culpability of your actions. She further opines that your condition warrants consideration in sentencing because, as a young man with a disability and no prior involvement in criminal proceedings, you have heightened risk factors for mental health deterioration and difficulty coping in a custodial environment. A custodial sentence would, in her opinion, weigh more heavily on you than an individual in normal health. I accept those opinions.

I also accept her opinion that your condition does not negate the need for a curial response to your conduct, which is intended to address issues of personal and general deterrence. I consider this behaviour to be out of character, notwithstanding your admission to police that you had hit your mother before.

Your conduct is serious and the aggression you have exhibited towards your mother is conduct which should be responded to with a severe penalty. That penalty should take account of the opinion expressed by Dr O'Donnell, your remorse, evidenced by your plea, and your apology to your mother. I also have regard to the utilitarian benefit of your plea of guilty.

There is a limited range of sentencing options available to the Court. You are not employed so you have no capacity to pay a fine. A home detention order creates difficulty because the conduct involved in your crimes, occurred in the family home, where it is likely you would seek to be detained. Whilst you are presently accommodated elsewhere, you rely upon your parents for support, but I think it unlikely in all the circumstances that their address would be considered suitable, and I do not intend to investigate that matter.

I have not had you assessed for a community service order, but in view of your health it is unlikely that that would be considered suitable.

I have therefor decided that, to mark the seriousness of your conduct, address the need for general deterrence and punishment, a sentence of imprisonment is appropriate, but in the circumstances of the opinion from Dr O'Donnell, and in the absence of prior convictions, the operation of that sentence should be suspended. That approach balances the need for a sentence which marks the seriousness of your conduct with the need to tailor the penalty to the particular circumstances of the case.

Mr Iwaszek, I convict you. I sentence you to 2 months' imprisonment, wholly suspended for a period of 12 months on condition that you commit no offence punishable by imprisonment in that time.