

**STATE OF TASMANIA v MOHAMMAD MALEKI
STATE OF TASMANIA v MOHAMMAD HEIDARI
COMMENTS ON PASSING SENTENCE**

21 MAY 2021

GEASON J

Mr Maleki and Mr Heidari, each of you has pleaded guilty to a charge of taking part in an affray.

At approximately 2am on 27 January 2019, four young men were removed from a bar on Morrison Street in Hobart as a result of a confrontation inside the bar. Two of the men were of African appearance. They believed that one of the other men, who was of Caucasian appearance, had made racially inappropriate comments towards them. Outside the two groups continued to argue. Each of you was outside the bar at this time. You had been drinking. Mr Maleki, you spoke with one of the men who believed he had been racially abused. You were sympathetic towards him.

Shortly thereafter a fight broke out, just a little farther away on Morrison Street. It involved the three Caucasian men and another group of men, including both of you. There were about ten men fighting. Some of the men ended up on the ground where they were kicked and punched, and each of you was physically involved in the fighting. No one was, fortunately, seriously injured. During the fight you, Mr Maleki, produced a knife which you swung violently at one of the Caucasian men. There were numerous spectators including intoxicated young men and women. Though initially considered to be entertainment, the episode became terrifying to onlookers, as the fighting moved back and forth across the street, and people were knocked to the ground and struck. Some of the episode was captured on mobile phone footage which was played to the Court on the last occasion.

On 20 February 2019 police identified Mr Maleki, who was arrested and taken to the police station where he was interviewed. In interview, you said that you had been drinking and had become very drunk. You said that you had met Mr Heidari in Salamanca Place, and met some friends outside a bar, including two men of African appearance not previously known to you. You acknowledge that a group of white males approached you and started swearing and that fighting broke out. You identified yourself as the person swinging the knife in the mobile phone footage. You said you did not try to hit anyone with the knife. You said that you did not have a weapon but you took a knife from one of the attackers. You described it as a folding knife about 8 to 10 cm long. It is the Crown case that you had the knife with you, rather than that you procured it from a third party. Ultimately it is the use of the knife that I am concerned with in assessing the objective seriousness of the conduct, and there can be no doubt that its use was inherently dangerous.

Mr Heidari you were identified from the mobile phone footage and you voluntarily attended police in March 2019. You told them that you were in the area of the Parliament lawns on 27 January where you were moderately intoxicated. You said that you were part of the fight in Morrison Street and that you were there with Mr Maleki. You described several white men swearing at you, and racially abusing you. You claimed to have become involved in the fight to defend yourself. By your plea of guilty you accept that your involvement in the affray went beyond self-defence or the defence of another. You said that Mr Maleki told you later that he had a knife, but that you had not seen it on the night.

I have received reports in relation to both of you. Mr Maleki you were born in Iran, after your parents had fled from Afghanistan following the Soviet invasion. You live in rented

accommodation in Victoria with your mother and sister. You spend a lot of your time caring for your mother. You were educated in this State and gained pre-tertiary qualifications at Claremont College. You studied English at TAFE to improve your literacy, and describe yourself as having good reading and speaking ability in English, though you struggle with writing it. You have apparently commenced employment with a real estate agent in Cranbourne in Victoria, and you spend much of your income supporting your mother and sister. You are the sole income earner in that household.

Whilst you have been a drinker, you describe yourself as no longer drinking often. You have reported some cannabis use in the past but that is infrequent. You have expressed deep regret for your behaviour and claimed to have learned from the experience. You have expressed a strong desire to put this offence behind you and to focus on supporting your family and building your future.

Mr Heidari you were born in Iran in 1999. Your parents were also refugees from Afghanistan. Yours was a stable childhood. You reside with your mother who has complex medical needs and a younger brother who is still in school. Your father died about 7 years ago in Iran. You have been in a relationship for 18 months with a person described as pro-social, who is studying law. You moved to Victoria about 14 months ago.

You learned English in Australia, though your first language is Persian. Whilst you had some behavioural problems at school in Iran, you appear to have completed your schooling successfully in this State and without incident, attending TAFE, but without completing any courses. You have had labouring roles in the past 12 months in Victoria though you are presently unemployed.

Whilst you have used cannabis in the past, such use is said to be infrequent and it is alcohol use which figures prominently in your socialising. It is reported that you recognise that your past offending was centred around alcohol use, and that you have reduced your alcohol consumption since.

It is suggested to me that each of you entertains concerns with respect to any prospective citizenship application in consequence of your conviction. I have considered the submissions that have been provided to me in relation to that, and whilst I accept that these convictions will be considered in the event of future applications, I take the view that your otherwise good character will overcome the effect of a conviction. That, in my view, would be an appropriate assessment to make in all the circumstances.

The conduct in which each of you engaged was aggressive and no doubt frightening to third parties. I consider it aggravating that the offending occurred where it did, in a public place and in the presence of a number of other people. This was a large fight which continued for some time. The need for general deterrence is real. The use of a knife is aggravating, and a consideration which is relevant to sentencing Mr Maleki.

As well as the need for general deterrence, the sentence imposed by the Court must serve as a personal deterrent. I accept that the process of engagement with police and the courts will have had a salutary effect on each of you in circumstances where you have not had such contact before. I note that each of you is pursuing a new life interstate and that each of you performs a role in supporting your family. That is relevant as evidence of character. I have regard to those things in making my assessment of the personal deterrence aspect of the sentencing exercise.

Relevantly, as I have noted, neither of you has prior convictions for offences involving violence.

You first appeared in this Court in June 2019, but in consequence of the COVID-19 pandemic, and your subsequent move to Melbourne, which move prevented each of you from returning to the State for some time, it was not until September 2020, in your case Mr Heidari, and in March 2021, in your case Mr Maleki, that pleas of guilty were indicated to the charge.

Nevertheless, I take the view that the pleas constitute early pleas, and the circumstances of the pandemic are, substantially, responsible for the timing of the pleas. There is a utilitarian benefit, and I will apply a discount of 10% to the sentence in consequence of that, because acceptance of guilt and the avoidance of a trial is a course which should be encouraged in a way which is obvious so that others do the same.

I note that neither of you is considered suitable for community service orders, by reason of your being resident interstate.

In framing penalty I have regard to the need for parity, though I note, as I have said, that there is an additional aggravating feature attaching to the conduct of Mr Maleki, involving the use of a knife, which is required to be reflected in the sentence.

I convict each of you.

Mr Maleki, I consider that your conduct is serious and that the relevant sentencing considerations – general deterrence and specific deterrence, in particular necessitate a sentence of imprisonment.

Mr Heidari I have reached the same view in respect of your conduct.

Mr Maleki, the order of the Court is that you be sentenced to a term of 4 months' imprisonment. I have reached the view, having regard to your previous good character, your remorse, your plea of guilty and your otherwise good character, that it is appropriate to suspend that order on condition that you are of good behaviour for a period of 12 months and commit no offence punishable by imprisonment in that time,

Mr Heidari, I sentence you to 3 months' imprisonment, and for the same reasons I also suspend that sentencing order, on condition that you are of good behaviour for a period of 12 months and commit no offence punishable by imprisonment.