

STATE OF TASMANIA v JAMES MATTHEW JOHNSON
COMMENTS ON PASSING SENTENCE

7 JUNE 2021
GEASON J

Mr Johnson, you have pleaded guilty to a charge of assault contrary to s 184 of the *Criminal Code*, and to three counts of common assault, which I am dealing with, at your request, pursuant to s 385A of the Code. Those offences involve three acts of violence against the complainant on 2 July 2018.

The indictable matter occurred as part of the same course of abusive conduct, and involved punching the complainant multiple times, hitting her head with a pillow, dragging her by the legs, choking her with her clothing, putting a pillow on her head, punching her to the face multiple times and holding a knife to her throat and cheek.

You commenced a relationship with the complainant in early 2018 and you moved in together in the middle of that year. At the time you were a heavy cannabis user, and you were known to become angry and agitated when you did not have any cannabis.

On 2 July 2018 you told the complainant that you wanted to take a canoe from Eggs and Bacon Bay. She did not want to go with you and you argued about that. Eventually she gave in. She accompanied you and helped you to drag the canoe up the beach. When you were unable to fit the canoe in the back of the car you decided to leave it there. However you became concerned about your fingerprints being on the canoe, and you dragged it back to its original position. When you returned to the car, the complainant was laughing and you became angry. You grabbed her by the back of the head and you threw her into the car. As you drove you verbally abused her, calling her a "lazy mole" and a "lazy slut". You remained abusive throughout the drive. She asked to be let out of the car but you told her that if she got out, she would be dead. When she became silent, this further angered you. You told her that she had better start talking or you were both going to die. At a jetty at Petchey's Bay you stopped your vehicle and told her to get out of the car, which she did. You then dragged her by her hair, saying that if she did not start talking to you, you were going to walk her out into the water and she was not going home. She believed you were going to drown her and she was scared. She started talking. She told you that she loved you and she was not going anywhere, which apparently calmed you down. You drove home. She kept chatting to you, but when she fell silent you yelled and screamed at her. More than once when she did not speak, you slapped her or pulled her hair.

You arrived at home at about 8pm. You unlocked the door because the complainant was not allowed to have keys to the house. No one else was there. You both had some cannabis. She fell silent again and when she did, you kept telling her to talk. If she did not, you punched her. You threatened her telling her to "talk now slut or you're gonna die".

Throughout the night you kept watching her. When she told you she wanted to go and stay at her mother's house, you became angry. She said she had not seen you that angry before. You grabbed a pillow and started hitting her around the face with it, you grabbed her legs and pulled her off the couch. You held her, pulling her clothing around her throat and started choking her by holding it so tightly that it restricted her breathing. You placed a pillow over face and punched her to the face eight to ten times. You kept telling her to talk or she would be dead. You told her that if she fell asleep you would hold her eyes open with toothpicks. She was too frightened to sleep.

Eventually she told you that she had had enough and she wanted to leave. You replied that the only way she would be leaving was in a wooden box. You next suggested that you both go out into the bush so you could watch her dig her own grave. She was terrified and believed that if she left the house she would be killed. She sat back on the couch. You went into the kitchen and you returned with a knife. She closed her eyes and you ran the knife along the left side of her throat. You held it against her throat, and then against her face.

She tried to appease you, telling you that she was going nowhere and that she loved you.

You went into the bedroom where you began chopping up some cannabis, using metal scissors. You yelled at her again for not talking. You took a heavy wooden bowl and hit her to the top of the head with it. She put her hands to her head to protect herself and the bowl hit her finger, injuring it and breaking the bowl.

She describes feeling numb. She told you that she was tired. You told her that if she did not keep talking you would stab her in the eye with the scissors. You leaned over her and held the scissors near her eyes. By now it was about 4am and the complainant was exhausted. She fell asleep for several hours, waking at about 10am.

Even when she woke you remained verbally abusive, telling her that all women are sluts, and all women need their throats cut.

When you went to shower she ran from the house to a neighbouring property where she approached a tradesman who called the police on her behalf. You called after her, and shortly after that you drove away from the property.

The complainant rang her sister telling her you had tried to kill her, and had held a knife up against her throat. Her mother and sister drove to the house. She was observed to be hysterical, jumpy and petrified.

When police attended, the complainant did not want to make an official complaint. She went to stay with her mother. She attended her general practitioner in early July of that year. On 4 July she did make a statement to the police, but she remained in contact with you, and you told her that you would commit suicide if you went to gaol, and promised that you would admit yourself to the psychiatric care you acknowledged you needed. She spoke to the police again after this conversation and asked that the complaint be dropped. She falsely claimed that she was angry with you and affected by alcohol and drugs when she had made her statement. Later she changed her mind and decided to pursue the charges.

The complainant suffered a badly swollen finger from the incident which continues to cause her pain. I have read her victim impact statement and it is very clear that her mental health has suffered as a result of your conduct, and continues to.

You admitted yourself to the psychiatric unit at the Royal Hobart Hospital a few days after the assault. Police attended and interviewed you. You acknowledged that you and the complainant had been on the beach and used the canoe, stating that you were going to play around on the beach with it. You denied that you were angry or had grabbed the complainant by her hair or thrown her in the car. You claimed not to remember having an argument with her, stating it was a good night, and you did not fight. You denied the allegations of violence. You were unable to explain how the wooden bowl had been broken, claiming that you had left the house

that morning because you were picking up more drugs. You said that you smoked 50 cones of cannabis a day; you said that you had admitted yourself to hospital because you wanted to get off the drugs and alcohol and to clean up your life. You denied being prompted to do so by reason of the assault you had committed.

You have prior convictions in 2010 for a Code assault, and 2016 for common assault. Nevertheless I accept the submission that for present sentencing purposes you are a significantly improved individual, this offending having occurred in 2018.

I note your family circumstances. I note that you are in a relationship of some 12 months' duration, and that you have been living with that person for most of that time. You engage in a number of outdoor activities and present with a positive work history. I am told that you have left your most recent employment due to these matters and the prospect of a period of imprisonment.

In fixing sentence I have regard to the contents of the detailed pre-sentence report which I have received and the submissions made on your behalf by Mr Cangelosi in mitigation. Those submissions include a character reference from a Ms Dunn which reinforces the point that you have made significant changes in your life. These changes include moderating your alcohol consumption. It is suggested that at the time of your offending you were consuming a bottle of spirits a day. Similarly your excessive cannabis use has been abandoned, and you are apparently not using any other illicit substances, and have not been doing so for a period of about two years.

There are some inconsistencies in the pre-sentence report as between its contents and the submissions that were made to me in mitigation, but I am prepared to accept the explanation for that advanced on your behalf when the matter was last before the Court. I accept too the thrust of the submission made on your behalf to the effect that the significant improvements that you have made suggest progress towards your rehabilitation, with a consequential need for a reduction in personal deterrence as an aspect of sentencing.

I do not ignore your history of mental illness, noting hospital admissions and suicide attempts in the past. It appears that since the engagement with the psychiatric services at the Royal Hobart Hospital in 2018, there has not been further psychological intervention on the basis that you consider your mental health is now okay, that you are surrounded with supportive people, and have gainful employment. Nevertheless there are some concerns expressed by Community Corrections in relation to your mental health based upon correspondence from a Dr Lemmon at the Huon Doctors' Surgery, which records that you are supposed to be medicated for anxiety and depression, but that you have not obtained a prescription since 2019.

The seriousness of your conduct cannot be ignored, despite the improvement which has been made. Offending such as this, typically occurs out of sight, and carries with it the risk of serious physical and mental harm. It requires a penalty which serves to deter others before they act, by making it clear that such conduct will always attract a stern punishment. As such general deterrence considerations figure prominently in fixing your sentence.

Your conduct was appalling. This was a protracted course of family violence which has had a devastating effect on the complainant. You had multiple opportunities to desist but chose not to. You apparently preferred to subject your victim to a drawn out course of punishment because you found her behaviour unsatisfactory, and not sufficiently deferential to you. You

threatened her, you hurt her, you prevented from sleeping, you stopped her from leaving. You degraded her. I have concluded that it is only a sentence of imprisonment that will punish you, vindicate your victim, denounce your conduct and deter others.

I acknowledge your plea of guilty and I will discount the penalty I would otherwise have imposed by 5% because it was a late plea.

I convict you, and on the indictment I sentence you to two years' imprisonment. On the complaint, I record convictions.

I turn to consider whether it is appropriate to suspend all or part of that sentence in accordance with the approach articulated by the High Court in *Dinsdale*. Because your rehabilitation is to be encouraged, and you have made progress since 2018 when this offending occurred, and in order to encourage that progress, I have decided to suspend part of that sentence. To suspend all of the sentence would rob it of the required punitive effect.

I will suspend 10 months of the sentence that I have imposed on condition that you are of good behaviour, upon your release, for a period of three years and commit no offence punishable by a term of imprisonment in that time. You will be subject to a community correction order on your release. That order will contain all of the usual conditions, and a specific condition which requires that if directed you must submit to assessment for eligibility and suitability for any program to address family violence offending, including the Family Violence Offender Intervention Program, the Domestic Abuse Program, or EQUIPS Aggression Program. You must also obey all reasonable directions of your probation officer in relation to drug and alcohol use during the period of the order.

The effect of the sentence that I have imposed is that you must serve 14 months in prison before you are released. The sentence commences on the date you were taken into custody. You have a further 10 months imprisonment hanging over you. It may be activated if you commit an offence punishable by imprisonment in the period of three years after your release.