

Mr Whitney, you have pleaded guilty to two counts of assault and the summary offence of destroying property.

You committed the offences on 29 September 2018. You and the complainant had been in a significant relationship but had recently separated. You were still residing in the same premises, although sleeping in separate rooms.

This was AFL grand final day. The relevant events occurred after you had both been drinking for a significant period of time, although the complainant was relatively sober. You had been together with friends at their home. At some point, you noticed that the complainant was missing, and you returned home to look for her. When she was not there, you became agitated, and this apparently developed into anger. You sent her a number of abusive text messages, and smashed her bedroom mirror, leaving broken glass over her bed. This constitutes the destroy property offence. When she returned home soon after, you verbally abused her and then assaulted her. The first assault consisted of you holding her by the arms and constantly hitting her against a wall. You then put your hands around and squeezed her throat. Her breathing was restricted and you held her like this to the point of loss of consciousness. She tried to resist you but you used your physical strength to overcome that resistance. The struggle continued into the bedroom area, where you committed the second assault. You did this by punching the complainant to the right side of her face near her eye. The complainant's wrist was injured when she attempted to block your punch.

The complainant went to the hospital two days later, where it was observed that she had suffered tenderness on various parts of the body, multiple bruising to both arms, bruising around the eyes, on both sides of her upper chest and under the jaw, and bruising to her left eardrum. She has suffered ongoing pain in her wrist and tests have confirmed a ligament tear in respect of this joint. I have read the complainant's impact statement. She has suffered physical and psychological consequences as a result of the trauma of this attack. She has sought and received counselling and intends to seek the assistance of a psychologist. There has been a significant impact on her self-esteem and her interest in forming other relationships. The impact described by the complainant in her statement is consistent with the type of serious post-traumatic consequences which can reasonably be expected after experiencing violence of this nature.

You are 43 years of age. You have no prior convictions in Tasmania, apart from one speeding fine. However, you have a history of offending in Western Australia between 1999 and 2014, although all of the convictions appear to be for relatively minor drug and traffic offences. I am told that you have two children who are living in Western Australia and that you have a good record of employment, and have been employed in a spray painting business in recent times. As previously indicated, I have now received a reference from your employer who speaks in general terms highly of you. You also care for your mother who is disabled by serious health concerns. It is not clear to me that any alternative arrangements have been put in place for her care, in the event of a continuation of your imprisonment.

Your counsel tells me that you were extremely intoxicated when you committed these crimes and have little recollection of what happened. You were told what happened by the complainant the next day, and you encouraged her to seek medical assistance for her injuries, although you

and she agreed that she should give a false story to the hospital. You then remained living under the one roof for some months, until final separation. It was at that point that the matter was reported to police.

It is clear that your conduct was fuelled by a toxic mix of excessive alcohol consumption and jealousy. Your counsel submits that this conduct was out of character. It might well be in the sense that you have not been convicted before or since of any other family violence offence, or indeed any other offence involving violence. However prosecuting counsel submits that the crimes were not committed in isolation and there is reason to suggest that you may benefit from supervision and involvement in appropriate programs. A presentence report has assessed that you would benefit from ongoing supervision, addressing in particular substance abuse issues and personal relationship risks.

I accept that you have a level of remorse for this conduct, although I do not regard the plea of guilty as demonstrating remorse. The plea does have some utilitarian value in that it has avoided the need for the complainant to give evidence in a trial, but she was still required to give evidence in preliminary proceedings, and your decision to plead guilty was made just before the commencement of the trial, although as your counsel tells me, shortly after the filing of the indictment.

Notwithstanding these considerations, and in particular your lack of prior convictions, the objective seriousness of the offending is very high. Of particular concern is your application of pressure to the complainant's throat for an extended period of time, which restricted her breathing and resulted in her almost losing consciousness. It is well-known that such pressure can result in serious injury or even death after a short time, and has the capacity to cause ongoing and long-term physical and psychological consequences. Further, punching another person in the head is also extremely dangerous. The danger inherent in the violence, in particular the manual strangulation, is compounded by the fact that your rage and intoxication meant that you had no real capacity to judge or moderate your attack, and this is demonstrated in this case by the immediate impact of this attack on the complainant. Violence such as this must be condemned and severely punished by the courts. General deterrence is a very important sentencing consideration.

In my view, the only appropriate punishment for the criminal conduct perpetrated by you is the imposition of a significant sentence of imprisonment. However, because of your plea of guilty, your lack of prior convictions, and the welfare of your mother, which I think I should take into account, I intend to ameliorate to some extent the punitive effect of this sentence by partial suspension. This will also provide an opportunity for the recommended supervision.

The orders I make are as follows:

- 1 You are convicted of the crimes and the offence to which you have pleaded guilty;
- 2 You are sentenced to a global term of 15 months' imprisonment, which will be backdated to 10 June 2021. The last twelve months of the sentence will be suspended for a period of 18 months on the following conditions:
 - a that you are not to commit another offence punishable by imprisonment during that period;

- b that you will be subject to the supervision of a probation officer. You must comply with this condition for a period of 18 months. That period will commence from when you lawfully cease to be imprisoned under this sentence. The Court notes that the conditions referred to in s 24 (5B) of the *Sentencing Act* apply to this condition. These include that you must report to a probation officer within 3 clear days of the day that you lawfully cease to be imprisoned under the sentence. In addition to the core conditions the order shall also include the following special conditions:

You must, during the operational period of the order,

- (i) attend educational and other programs as directed by the Court or a probation officer;
- (ii) submit to the supervision of a probation officer as required by the probation officer;
- (iii) undergo assessment and treatment for drug dependency as directed by a probation officer;
- (iv) submit to testing for drug use as directed by a probation officer;
- (v) undergo assessment and treatment for alcohol dependency as directed by a probation officer;
- (vi) submit to testing for alcohol use as directed by a probation officer;
- (vii) submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;
- (viii) attend, participate in and complete the EQUIPS domestic abuse program as directed

Pursuant to s 13A of the *Family Violence Act*, I direct that each crime, but not the offence, be recorded on your criminal record as a family violence offence.