

STATE OF TASMANIA v COLIN HARVEY TEMPLAR
COMMENTS ON PASSING SENTENCE

6 AUGUST 2021
MARTIN AJ

Mr Templar you have pleaded guilty to a charge of wounding. On 1 September 2019 you unlawfully wounded the victim by striking him to the back twice with a pair of scissors. The victim was a friend of yours. He has been very good to you, he is still a friend. But he understands a bit about you that has been explained to me and I will come to that in a moment.

You are now 43. You and the victim knew each other well and the victim and his partner were living with you in premises at Rocherlea. You have known each other for about 8 years and the victim had moved in with you in August 2019.

On the afternoon of Sunday 1 September you were home together with a female friend who was cooking a roast. The kitchen became full of smoke and a smoke alarm went off. You had been asleep in your bedroom and the alarm woke you. Regrettably you reacted aggressively. You came out to the kitchen and started arguing with the victim about the temperature of the oven and you shouted at him and went back into your bedroom and slammed the door. On the way back to your room you picked up a bowl and a smoking device, related to your use of cannabis, and a pair of scissors. You screamed at the complainant to get out and the complainant replied in robust language that he was going.

The complainant went to his bedroom, collected his phone charger and you came out of the bedroom yelling just get out. Then you went into the victims bedroom carrying the scissors. The victim had his back to the door and you went up behind him and struck him once in the back with the scissors and the force was sufficient to cause the victim to fall onto the bed, after which he got up and left the bedroom. The victim went into the lounge room and you came up behind him and struck him in the back for a second time with the scissors in your hand. The force was sufficient to cause the victim to fall forward onto the female friend.

From the victim's perspective, the second blow to this back felt different and he started to feel dizzy and weak. He and the female friend went across the road and on the way the victim became aware of something wet on his back which he realised was blood. They obtained assistance from a friend across the road and pressure was applied to his back with a towel to stop the bleeding. When his jumper was lifted it was seen that there was, as described by the witness, a small hole in the right side of the victim's back near his shoulder-blade.

Police and an ambulance were called. Police saw the small puncture wound to the victim's upper back and he told police, quite accurately, that you have mental health issues. He described you as having a "split personality" and said the person who stabbed him was not you, it was the other part of your personality. Fortunately, the wound was not a serious wound. At the hospital it was cleaned and closed with sutures. The treating doctor described the wound as a "superficial and uncomplicated puncture wound".

Not surprisingly police went to see you. It took some 15 or 20 minutes or more for you to answer the door. It appears that a door ram had been used but the door had not been forced open when you opened it, stepped backwards and allowed the police to enter.

At the time of your response to police you did not accept full responsibility. You immediately said to police that you had told them to leave and pushed them out the door and claimed that all you did was push the victim. You admitted that you might have pushed him with a pair of

scissors. You were arrested, taken to the police station and interviewed. You told police that you were woken up by the fire alarm and when you saw the smoke you were in a "shitty" mood because you had been woken up. You told the victim to go away and went back into your room, shutting the door. You picked up the bong, the bowl and the scissors on your way back into the bedroom. Then you walked out and told the victim to "fuck off" again, went back into your bedroom and came out again. Seeing that they were still present, you shoved the victim toward the door and told him to go.

To the police you claimed that you were not sure if you had anything in your hand and that you could not remember whether you stabbed the victim. You said that all you remembered was shoving the victim twice, but admitted that you were in a "wild mood". Eventually you agreed that you had scissors in your hands both times when you shoved the victim. You accepted that what the victim had told police was correct. To the police you said that all you could say was that you should not wake up in grumpy mood and you apologised.

The plea of guilty has been accepted by the Crown on the basis that you knew that you had scissors in your hand that you used to strike the victim. The Crown does not accept your assertions that you were not aware and did not know that you had anything in your hand. The plea is accepted on the basis of subject recklessness, that is, that you foresaw the possibility that the victim would be wounded but you proceeded nevertheless. It is not known which of the two blows caused the wound to the victims back, but from the Crown facts it would appear more likely that it was the second blow. Counsel on your behalf has not suggested I should do anything other than sentence you on the basis of recklessness as described by the Crown.

Mr Templar I think you now understand that you committed a serious offence. It was pure luck that you did not cause a very serious injury. Sharp weapons like scissors and knives frequently cause very serious injuries and sometimes death, which is unintended. You attacked a friend.

There are matters personal to you that go a considerable way to explain your conduct. Born in 1978 you are now aged 43. You come from a large family and grew up on Flinders Island. While you were in year 8, early in the year, you left school and unfortunately you are unable to read or write. Drugs came into your life from a young age with the inevitable result that you became involved in extensive criminal behaviour which began when you were only 12. As a teenager you became a ward of the State at the Ashley Youth Detention Centre.

Over the years, it is to your credit that you have undertaken various forms of employment including as a ride control operator at agricultural shows for approximately 7 years. You have resided between Victoria and Tasmania. You were married for 10 years but separated about 3 years ago. There are 4 children of the marriage, 2 adults and 16 year old twins who are subject to child safety orders, having been removed from their mother's care. In recent times your lifestyle can be described as transient and disturbed. It is apparent that you need considerable help to function safely within the community.

For in excess of 25 years you have suffered badly from migraines, which began after a road accident. Significantly, you suffer from chronic schizophrenia of the paranoid type. You are aware that consuming alcohol and cannabis are not good for you, but you had a period of heavy drinking after your mother died in February last year. At the time of your offending you were not taking your medication regularly, and you admit knowing that bad things happen when you do not take your medication.

I am satisfied that your mental state contributed significantly to your offending. You told the psychologist, who prepared a very helpful report, that you were trying to sleep off a migraine and in pain when you were awoken by the fire alarm. You said that you began "raging" against your friend. It was an aggressive reaction caused by heightened irritability and aggressive impulsivity to which your mental illness significantly contributed. As a consequence of your mental illness your ability to exercise appropriate judgment was impaired. So, Mr Templar, all of that is very important when I come to assess the appropriate sentence, and in particular, your moral culpability. It is plain to me that your moral culpability is reduced by reason of your mental illness, but it is not such as to remove completely the need for both personal and general deterrence. However the community understands that where a mental illness contributed significantly to offending it is not appropriate to treat the offender as an example for the rest of the community when it comes to imposing severe sentences that are designed to act as a general deterrent. Nevertheless, there is a need for a degree of general deterrence and there is still a need also to deter you from offending again. So those factors all come into play.

Of course, ultimately, the job of the Court is to protect the public and you have a long record of prior offending which began in 1990. That prior offending includes a number of offences of assault including aggravated assault and offences of dishonesty, many driving offences, and generally it indicates that you have been a risk to the public, and that the court orders in the past have not succeeded in deterring you from offending again. Whenever you are released there is a risk that you will offend again because of your mental illness, but part of my task in sentencing and in trying to protect the public in the future is to fashion a sentence which hopefully will assist in minimising the risk of future offending. I must impose a sentence which recognises the seriousness of your offending, but also your reduced moral culpability and your mental illness.

The other matter that I need to bear in mind is that you have been in prison since mid-May of this year, and that sentence is due to expire on 15 August, so very shortly, and in fixing the appropriate sentence for the crime with which I am concerned, I need to bear in mind the totality of the time that you will be in custody.

Balancing all of these matters as best I can, had it not been for your plea of guilty I would have imposed a sentence of imprisonment for 15 months. However, you are entitled to credit for your plea of guilty, which I accept is, apart from its practical effect, a recognition by you and an understanding by you of the seriousness of your offending and the need for you in the future to make sure that you keep up with your medication.

After allowing for your plea I impose a sentence of imprisonment for 12 months commencing today, and that sentence will be suspended after you have served 3 months, meaning that you will have been in custody for a total of 6 months. That is both the sentence and the period to be served are notably less than would otherwise be imposed upon an offender who, with your record, did not possess your mental illness. In particular, the short period of 3 months to be served is a recognition of reduced moral culpability and of the need for you to obtain assistance in order to protect the public as best as it can be done in the future.

I make a community corrections order which will be operative for a period of 12 months from the date of your release. So when you are released in 3 months that corrections order comes into force and it is a condition of the community corrections order that you be under the supervision of a probation officer for that 12 months. There are certain conditions that are automatic in these situations which I do not need to go through, but speaking generally, you

are just going to have to do what the probation officer tells you for 12 months after you get out of gaol. It is a condition that you obey the reasonable directions of a probation officer as to your residence and employment and that you undertake such medical and other assessments and treatment as directed by the probation officer including assessment and treatment for use of illicit substances and alcohol and in relation to your mental illnesses. You are to obey the reasonable directions of the probation officer as to persons with whom you should not associate. So, in other words, if the probation officer thinks that the people you are associating with are undesirable, or a bad influence on you, the probation officer can tell you that you are not to associate with them and you have to break away from them.