

Comments on Passing Sentence:

Mr Smith has been found guilty by a jury on a charge of wounding. On the night of 30 August 2017 at the Derwent Tavern in Bridgewater he wounded a man named Matthew Banks by smashing a glass into his face.

On that night Mr Smith had been drinking at the tavern with some friends. Mr Banks had gone there with his father, who was involved in a darts tournament in another part of the premises. On a number of occasions Mr Banks walked past Mr Smith and his companions, going to and from a toilet. Mr Smith and Mr Banks made unpleasant comments to one another on these occasions. At one stage a scuffle broke out in the toilet. A staff member fetched the manager, who restored order. Mr Banks went into the toilet, and presumably used it. The events that followed were recorded by a CCTV camera. As Mr Banks emerged from the toilet, Mr Smith was sitting on a stool at a table with a glass containing beer in his hand. He saw Mr Banks emerge, drank the last of the beer, and held the empty glass below the level of the table, ready to use it as a weapon. The manager was still present. Mr Banks was being escorted past Mr Smith's table by his father when he suddenly took a couple of steps towards Mr Smith, apparently for the purpose of saying something unpleasant to him. There was nothing to indicate that Mr Smith was under threat. Mr Banks kept his hands by his sides. However Mr Smith suddenly stood up and smashed the glass into Mr Banks' face. I am satisfied beyond reasonable doubt that he knew that he had the glass in his hand, deliberately attacked Mr Banks with it, and intended to wound him.

Mr Banks suffered a large laceration across his nose, as well as multiple small lacerations to his forehead. Mr Banks went to the Royal Hobart Hospital where his nose wound was debrided and repaired with five stitches. He has been left with a permanent disfiguring scar. He is embarrassed about his appearance, fearful for his safety if he goes out, and reclusive. His alcohol consumption has increased, to the extent that he has sought professional help.

Mr Smith was 19 years old on the night in question and is now 22. In 2016 a magistrate placed him on probation and sentenced him to 35 hours' community service on two charges of assaulting police officers, one of resisting a police officer, and two of using abusive language to police officers. In the same year, he was convicted and fined on charges of disturbing the public peace by fighting, and resisting a police officer. However he did not re-offend until the night in question, and he has apparently not re-offended since.

Mr Smith was arrested at some stage after midnight on the night in question, interviewed by detectives, and then charged with wounding and bailed. On 3 September 2018 he failed to attend court when required, and a warrant was issued for his arrest. Some 17 months later, he was arrested, brought before a judge, and bailed again. It was not possible to bring him to trial for several months because jury trials were suspended as a result of the COVID pandemic. His trial was one of the first to proceed after jury trials resumed. This is not a case where delay is a mitigating factor.

Mr Smith now has a partner and a daughter aged about 8 months. He is unemployed, but had steady employment for about two years while this charge was pending. He reduced his alcohol consumption significantly after the night in question. Because he had stayed out of trouble for about three years, I ordered a report as to his suitability for a home detention order. He is considered suitable for one, provided he lives at the home of his mother, not at the home of his partner.

If Mr Smith had not been considered suitable for home detention, I would have sent him to prison. The attack on Mr Banks was senseless and vicious. Mr Smith had the opportunity to change his mind as Mr Banks walked towards him, but remained poised to attack, with his glass held out of sight below the level of his table. His victim could have lost an eye, and has been left with an embarrassing and disfiguring scar. However because Mr Smith has stayed out of trouble for three years, I will make a home detention order.

Hayden Dale Smith, I convict you and make a home detention order for an operational period of 10 months. The full contents of the order will be set out in a document that will be provided to you. They include conditions, all of which apply for those 10 months, as follows:

- You must not commit an offence punishable by imprisonment.
- You must reside at [address].
- You must be there at all times, except when you are not there for a "relevant reason" specified in s 42AB(4)

Supreme Court

COPS Report

Comments on Passing Sentence (continued):

of the Sentencing Act 1997. That includes going somewhere with your probation officer's permission.

- You must permit a police officer, probation officer or prescribed officer to enter those premises.
- You must permit a police officer to conduct a search of the premises, conduct a frisk search of you, and take a sample of any substance found on the premises or on your person.
- You must submit to electronic monitoring, which may include wearing or carrying an electronic device.
- You must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- You must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring including directions in relation to the installation, attachment or operation of a device, or a system, used for the purpose of electronic monitoring given by a police officer, a probation officer, a prescribed officer, or any other person whose functions involve the installation or operation of a device or a system used for the purpose of electronic monitoring.
- You must maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact through that device at all times.
- You must submit to the supervision of a Community Corrections officer as required by that officer.
- You must not take any illicit or prohibited substances. Those substances include any controlled drug as defined by the Misuse of Drugs Act 2001.
- You must not take any medication containing an opiate, benzodiazepine, bupropion hydrochloride or pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed that medication.
- If directed to do so by a police officer, probation officer, or prescribed officer, you must submit to a breath test, urine test, or other test for the presence of an illicit drug.
- You must not consume alcohol.
- If directed to do so by a police officer or a Community Corrections officer, you must submit to a breath test, urine test, or other test for the presence of alcohol.
- You must submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.
- Immediately after leaving Court today you must attend the office of Community Corrections at Glenorchy for induction arrangements relating to this order.

I also make a community correction order, to operate for six months after the expiry of your home detention order, with special conditions that during the operational period of that order, (a) you must submit to the supervision of a probation officer as required by the probation officer; (b) you must undergo assessment and treatment for drug and/or alcohol dependency as directed by a probation officer; (c) you must submit to testing for drug use and/or alcohol use as directed by a probation officer; and (d) you must submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.