

Tyson Hayes, you are to be sentenced on your plea of guilty to aggravated burglary and aggravated assault. Sometime shortly after 6am on Saturday 1 June 2019 you and another man, who has not been identified, went to the home of the complainant in Devonport. She was then aged 18. You and she had been in a relationship for several months but it had become highly volatile. You argued frequently about each other's suspected infidelity and you had become physically and verbally abusive. During the course of the previous night you had been arguing by Facebook Messenger exchanges during which she said that she had been told you had been using drugs. Your motive in going to her home was to find out where she had got this information. You threatened that you would force the information from her. Just before 6am she sent you a message ending the relationship.

You and the other man arrived at her unit a few minutes later and entered without her permission. You were both wearing hooded jumpers and balaclavas. The man you were with was carrying a shortened side by side double barrel shot gun. She was in her bedroom wearing only her underwear. Despite your disguise she immediately recognised you. You pushed her to the floor in the corner of her room. As she cowered in the corner trying to cover her face and head with her hands you and the other man both punched her and the other man struck her with the butt of the firearm. She estimates she was punched and hit with the gun between 15 and 20 times while you repeatedly yelled at her, demanding her phone. After you eventually stopped hitting her you left.

The injuries to the complainant's head caused a lot of bleeding. The photographs of her unit show blood on the wall near where she was struck. She put a towel on her head and ran through the car park to another unit seeking help. An ambulance was called by a different neighbour who heard her screams. The ambulance and police arrived soon afterwards and she was taken to hospital.

The complainant was found to have a 4 to 6 centimetre laceration to the back of her scalp, swelling and bruising to her right temple, forehead and around her right eye, a small abrasion to her top lip, bruising on her upper back, scratches to the back and right side of her neck and right shoulder, abrasions to her left shoulder, bruising to her left forearm and bruising and swelling to the tops of her hands. At the hospital the laceration to her head was closed with nine staples. She was discharged from the emergency department without having to be admitted although she continued to experience some back pain. In her victim impact statement she referred to a fracture to a lumbar vertebrae but the State does not assert that you caused such an injury. Otherwise, her victim impact statement describes the type of effects which might be expected from an attack of this nature. She has ongoing psychological impacts including panic attacks, fear, insecurity and interrupted sleep. She feels unsafe generally and has a continuing fear of you.

You are now aged 24. You come from circumstances of considerable disadvantage and physical and psychological trauma all of which have had a profound effect on you. Your background was described by your counsel, but also in a report prepared by a clinical psychologist, Dallas Hope, dated 1 March 2020. As a very young child you suffered very serious submersion burns to your face, head and hands which resulted in permanent scarring. You were removed from your mother's care as a result of her neglect and much of your childhood has been spent in various care placements including with your maternal grandmother

and later in therapeutic residential care. You were subject to physical and emotional abuse. As a young person you were bullied and your attendance at school was sporadic. Your relationship with your mother over many years was characterised by persistent conflict and sometimes resulted in you becoming violent towards her. Sometimes you were violent and abusive to others. Mr Hope reports that, for various reasons, he did not complete a thorough psychological assessment, but he expresses the opinion that it is clear that you suffer from a clinically significant psychological disorder resulting from exposure to ongoing trauma, likely a trauma related attachment disturbance. As a result, you have a reduced self-worth, reduced ability to regulate intense and easily triggered emotions, like anger, and your ability to develop a sense of security in relationships with others is undermined. In Mr Hope's opinion there is a risk of further violence unless the underlying psychological condition is addressed, and in that regard his opinion is that the basic anger management programs or even up to 10 sessions with a psychologist is unlikely to be adequate.

Some of the matters I have just addressed seem to be reflected in your record of offending. In 2013, when you were a youth, you were sentenced but not convicted for a number of counts of common assault. Between then and 2017 your record is mostly for driving and antisocial offences. However in 2019 you were sentenced for other offences of violence. The first was committed in 2017 when you assaulted another man by punching him in the face. That resulted in a term of 28 days served in 2019. Also, in 2019 you were sentenced by a magistrate to a short term of imprisonment for emotional abuse and intimidation contrary to the *Family Violence Act*. That offence was committed against a former partner over a period of about three months in 2018. Then, on 17 July 2019 you were sentenced by a magistrate to a total effective term of imprisonment of 16 weeks, 10 weeks of which was suspended, for a number of summary offences, including drug offences, but also including an assault of your grandmother by striking her to the face on 28 May 2019 in breach of a restraint order. I note in passing that this was three days before the crimes I am now dealing with. Then, in April 2020 you were sentence by Geason J to imprisonment for 18 months from 21 July 2019 for two serious assaults committed against your mother on 20 March 2019. You choked her by squeezing her throat to the point that she could not breathe, and then fractured her jaw with a punch. Again I note that the crimes for which you are now to be sentenced were committed just over two months later.

Eight months of the term imposed by Geason J was suspended for two years. His Honour made no parole order. However the term of actual imprisonment and the two suspended terms to which you were subject on your release did not deter you. On 3 February this year you were sentenced for other offences including three common assaults committed in July and August 2020 against females, one a former partner. One of the victims was punched to the head. Both of the suspended terms, eight months and ten weeks, were activated to be served cumulatively to an additional six week term, resulting in a total term of imprisonment of about 12 months from 12 October 2020. Seemingly, again, no parole order was made and you are currently serving that sentence. The effect of all of that is apart from a few months in 2020 you have been in prison since early June 2019. All of the sentences imposed after 1 June 2019 are not prior convictions for sentencing purposes but are relevant to totality and the question of reform.

A matter I must address is the submission by your counsel that the first, third and fourth of the factors commonly referred to as the *Verdins* principles apply: that your moral culpability is reduced by mental impairment, and that there is also a reduced need for general and specific deterrence. The State does not concede that any of the principles are enlivened. Mr Hope's report was prepared for the purpose of sentencing for the crimes dealt with by Geason J, and not the crimes I am dealing with. Nor does Mr Hope's report address your use of illicit drugs.

You admit that the relationship with the complainant was affected by your use of illicit substances and say that you were under the influence of drugs at the time of the attack. Your counsel made clear that no further evidence is to be produced on these issues.

Generally speaking, in order for the first, third and fourth *Verdins* principles to have application, there must be a connection between the impairment of mental functioning and an offender's moral culpability or the need for general and specific deterrence. To show the necessary connection an offender must establish that the mental impairment affected his or her ability to appreciate the wrongfulness of the conduct, or obscured the intent to commit the offence, or impaired the ability to make calm and rational choices or to think clearly at the time of the offence. I think that Mr Hope's report contains sufficient material to establish mental impairment and a contribution of that impairment to this offending by extension of the contents of his report to the circumstances of this case. I think that there is some reduction in moral culpability because of your reduced ability to regulate anger in circumstances of relationship breakdown and conflict. One effect of what is likely to be a trauma related attachment disorder is that your ability to make calm and rational choices and to think clearly is affected. When your emotions are triggered, as they were here, you are unable to properly regulate your reaction and there is a resulting increased risk of violence. However it moderates the sentence to only a small extent because of the part played by illicit drug use and because, in this case, there was some opportunity to reflect on what you planned to do. I am not persuaded, on the evidence provided to me, that there is any moderation of substance to the need for general or specific deterrence. According to Mr Hope, and history has demonstrated, you may not learn from a sentence, but this likely results from a reluctance to accept blame.

It is in your favour that you pleaded guilty. The plea came however at a very late stage after your trial had commenced. The complainant had been briefed, was present at court, about to be called, and she had previously been examined in preliminary proceedings. She did not have to give evidence before the jury but faced the prospect of having to do so for more than two years. I think that the plea of guilty is best taken into account by permitting an earlier eligibility for parole than otherwise would have been allowed. I must also take into account the principle of totality, given that these crimes were committed at about the same time as other offences for which you have served, and are continuing to serve, terms of imprisonment, all without eligibility for parole. Nevertheless, these crimes involve very serious separate criminality. It was a terrifying, deliberate and cowardly attack committed against a female in what should have been the safety and security of her own home. You went there intending violence. She was vulnerable and completely unable to defend herself against a sustained attack, including use of a weapon, committed by the combined force of two men. The extent of the violence is amply demonstrated by the laceration to her head and her other injuries. You are not to be punished for any conduct which is not the subject of these charges, but it cannot be said that this was an isolated instance of violence towards a female or out of character. You are criminally responsible, and highly culpable, for all of the violence. Counsel for the State's reliance on the principal of joint criminal enterprise is unnecessary. It is obvious that your presence at the unit was to pursue your own grievance and you knowingly went there with a man armed with a weapon for that purpose. You are criminally responsible as a principle, and because you aided, abetted and instigated the violence, and because his use of the gun as a weapon was either intended by you or was a probable consequence of your joint purpose.

It should be made clear to you and others that resort to violence in circumstances of relationship breakdown is to be strongly condemned by the community and the courts and should result in stern punishment. There is also a strong need to protect the public from your ongoing violent

behaviour, especially against women. The seriousness of violence against women with whom the perpetrator is or has been in a relationship has been repeatedly emphasised by courts in this State. There has been no real indication of the type of remorse a court looks for. Your counsel indicates that you now recognise the need to address the factors which lead you to offend in this way but you will need to demonstrate that by your actions. I was asked to consider making a community corrections order, but the term I am about to impose will preclude that: *Sentencing Act* 1997, s 8(1)(a), and in any event, such an order would preclude an order for parole: s 17(2A).

Tyson Hayes, you are convicted on both counts to which you have pleaded guilty, which are counts 1 and 3 on the indictment filed 30 August 2021. I impose one sentence. You are sentenced to imprisonment for two and a half years. I order that you not be eligible for parole until you have served half of that term. I order that three months of the term just imposed be served concurrently with the total term you are presently serving and the balance is to be served cumulatively. The effect of that order is that you will be required to serve an additional term of 12 months before becoming eligible to apply for parole. Whether you are granted parole will of course be a matter for the Parole Board.