

TASMANIA v SHAUN ROGER BARNES
COMMENTS ON PASSING SENTENCE

17 APRIL 2008
SLICER J

Shaun Roger Barnes has pleaded guilty to the crime of committing an unlawful act intended to cause bodily harm contrary to the Criminal Code, s170(1). On 4 October 2007, with intent, Mr Barnes had brutally punched, kicked and beaten Malcolm Fenton, leaving him comatose and severely injured.

Following investigation of allegations made by the complainant and two other men, Mr Fenton was charged, in June 2007, with three sexual crimes said to have occurred some years previous and remanded to the Magistrates Court in October 2007. It is not the province of this sentencing court to inquire into or make findings about the allegations. Consistent with the principles identified in *R v S* (1991) Tas R 192, this Court accepts that the attacker had a belief about those allegations which is relevant to this determination of penalty. The position differs where the claimed earlier event has been dealt with by a plea or jury verdict. I will accept the prosecution's position that:

"The office of the DPP has been involved and was of the opinion that there was sufficient evidence to file an indictment in respect of the complaint. Any proceedings in the Supreme Court were [*as of October 2007*] very unlikely to occur before 2008."

On 4 October, Mr Barnes met with Crown counsel who was to conduct the intended proceedings and was given details of the court processes and an outline of the relevant evidentiary matters and procedures. During that interview the offender had become agitated and emotionally upset. Later in the day he began drinking, and, at one stage, confided in a stranger at an hotel recounting his various problems and giving his belief that the proceedings were to take place later in 2007. Later he became aggressive, eventually leaving the hotel at about 8.30pm. He later rang Mr Fenton and arranged a meeting between the two. At that meeting he commenced a savage and prolonged attack on his victim which included punching, kicking, stomping on the head, dragging him twice and repeating his attack at varying stages. He was wearing heavy boots, using them as weapons. The victim was bloodied and beaten almost beyond recognition and was close to death when found. His injuries were so severe that some little time after the attack his family was forced to decide whether or not life support systems ought be disconnected.

Mr Barnes was apprehended by police, with whom he was both agitated and aggressive. He initially denied responsibility for the attack, but recanted later in the police interview.

The injuries suffered by the victim included complex mid-facial fractures, skull fractures and brain haemorrhages, left optic nerve damage, wide-spread bruising to trunk and limbs. He remains permanently incapacitated and has been described as a 'shell of a man', reduced 'to a brain and bodily injured wreck'. He will need extensive care, paid for by his family, for the remainder of his life and will remain unable to live independently.

Mr Fenton has led a productive life. He was a caring father and family member, a respected and hard working business man and a long-serving and generous contributor to his community. The attack has effectively destroyed that life. His name ought not be tarnished by these proceedings.

The effect on the victim's family has been and remains devastating. The Court accepts, in full, the substance of an articulate and insightful impact statement prepared and presented by his daughter, Susan Bracken, outlining the effects of the crime on her father and the family at large. The Court accepts that no sentence can recompense for a life destroyed or meet the emotional needs or hurt of the family. But this Court is required to take into account many factors, including the need for consistency of punishment. That complex process is more difficult in a case such as this.

Mr Barnes, aged 32, has led a fractured life. He has suffered from depression and post-traumatic stress syndrome said to have originated from about the age of 11-12. He has a long-standing problem with alcohol abuse and has undertaken various programs in an attempt to remedy his condition. He has prior convictions indicative of alcohol abuse which in turn has brought about or hastened epilepsy. Significantly, he was convicted in August 2003 of causing grievous bodily harm by dangerous driving which involved criminal negligence and resulted in a 9 month sentence of imprisonment partly suspended. He has a partner and three children. He is entitled to the benefit of his plea of guilty.

The Court accepts that he had brooded on his grievance for some time, a condition brought to the surface following his meeting with counsel and exacerbated by alcohol and failure to maintain medication. Nevertheless, he chose to exact personal and vicious retribution on another. He was aware that the State was engaged in the proper legal processes and could not be said to be a person who believed there to be no other form of grievance. As was said in *S* (supra):

"The sentencing court should pay regard to the need for a general deterrence. One of the developments of any society has been to remove retribution from the hands of the victim or associates. The reasons for regularising the determination of culpability and punishment are obvious. Small social groups, such as aboriginal tribes, are best able to achieve a mix which involves collective responsibility for the determination of culpability and punishment with a degree of involvement on the part of the victim or family. Numerically larger societies find that process impossible because of their very size. In all societies personal vengeance, in the absence of group sanction, is prohibited."

In *Parker v Tasmania* [2007] TASSC 39, Crawford J stated, at 10:

"The consequences of his criminal acts are material considerations when assessing the severity of the sentence that should have been imposed, certainly where those consequences were foreseeable, as they were here. *Wise v R* [1965] Tas SR 196; *Inkson v R* [1996] TASSC 13; (1996) 6 Tas R 1. Vigilante justice must be condemned and a sentence of general deterrence in particular was required to send that message to the community."

Here, the consequences were horrendous. The attacker, whatever his belief, had no entitlement or justification to act as he did. Whilst in *Parker* the offender claimed to be acting in retribution for another, and in *S*, the father claimed there to be no other avenue for his retribution. Here, the form of the attack, its prolonged nature and the consequences require a penalty commensurate with that imposed in *Parker*. In *Gardner*, 6 August 2007, a

sentence of 3 years 3 months was imposed in a case of attack when the consequences were not as serious. The prior conviction in August 2003 requires a slight increase in the appropriate sentence. The offender is entitled to the allowance for two months already spent in custody, so the effective sentence is that of 4 years and 2 months' imprisonment with a non-parole period of three years.

1. Shaun Roger Barnes be convicted of the crime of committing an unlawful act intended to cause bodily harm.
2. Shaun Roger Barnes be sentenced to a term of imprisonment for 4 years, such sentence to commence as and from 7 April 2008.
3. Shaun Roger Barnes not be eligible for parole before the expiration of 3 years.

The victims of crime compensation levy of \$50 is to be paid within three months of release from prison.