

NA, you have pleaded guilty to one count of persistent family violence. The crime was committed over a 10 year period between 1 January 2010 and 19 February 2020. The victim of your crime was your wife, KA. You and KA commenced a relationship, when she was 14 years of age. You were a little over two years older than her. You married in 2013. Prior to your marriage you had lived together at various residences, and moved into the matrimonial home you had built together at the beginning of 2013. This home was in [address]. There are four children of the marriage.

In August 2019 you and the complainant separated. She continued to live at the residence. Both during the marriage, and after separation, your behaviour was controlling, abusive and violent. During the marriage you regularly physically, emotionally, verbally and psychologically abused your wife. Following separation this behaviour continued and escalated into sexual violence. The crime of persistent family violence is constituted by 14 unlawful family violence acts consisting of eight acts of assault that occurred prior to your separation, three acts of assault that occurred post-separation, and three acts of rape that occurred post-separation. The unlawful acts did not occur in isolation but rather exemplify the persistent pattern of violence that was perpetrated by you upon your wife throughout the course of the relationship. Your violence towards the complainant began before she turned 18. It involved you doing things like shouting at her, pinning her down, getting on top of her and hitting her. You would make demeaning comments towards her. Whilst this pattern of emotional and physical abuse occurred throughout the entirety of the relationship, it became far more pronounced during the 18 months prior to separation. The specific unlawful acts which are relied upon include the following:

- Occasion 1 – on an unknown date in 2010 at your parent's house, you pushed the complainant several times, pinned her onto the bed by sitting on top of her and pushed her shoulders into the bed with your hands. You yelled at her. Your yelling drew your father's attention. He entered the bedroom and ultimately pulled you from the complainant. The complainant did not suffer any serious physical injury as a result of this assault.
- Occasion 2 – Again in 2010, you pushed and shoved the complainant several times as a consequence of becoming angry that you had not been consulted about a motor vehicle the complainant's father had purchased for her. The complainant did not suffer any serious physical injury as a result of this assault.
- Occasion 3 – on 13 May 2012, after the complainant had declined your invitation to go for dinner at a restaurant, you became angry and pushed the complainant to the shoulder several times whilst yelling at her. The complainant was holding your infant son, who was only 5 weeks old at the time, when you did this. You then moved behind your wife and placed her in a headlock. You wrapped your arm around her neck and applied pressure to the throat. You dragged her backwards and down onto the ground. You held her in a headlock on the ground for a short period before releasing her. The baby was still in her arms. Fortunately, neither the complainant nor the baby suffered any serious physical injury as a result of this assault. The complainant was however, scared by your behaviour. Not even the presence of your young baby was enough to encourage you to desist from your actions.

- Occasion 4 – in early 2013 you and the complainant were travelling together in a motor vehicle discussing wedding plans. You became angry about something the complainant said about your sister. You grabbed the back of her neck with your hand and pushed her head down and into the window of the car. You then let go. When she lifted her head back up, you again took hold of her neck and forced her head down. You pinched the complainant's leg. She suffered a sore neck as a result of your violence. The complainant told you that she did not wish to marry you. You apologised and promised her that it would not happen again.
- Occasion 5 – in 2018, at a time when the complainant was pregnant with your youngest child, you, she and your three children were travelling home from a meal at a restaurant. You were driving. The complainant was sitting in the front passenger seat. The three children were in the back seat. You were angry. You reached over to the complainant and took hold of her hair at the back of her head. You forced her head down so that she was bent over in her seat with her head down towards her legs. You held her head down as far as it could go before pushing it even further and releasing it. When the complainant raised her head, you again took hold of it and pushed it back down before releasing it. You did this repeatedly to the complainant for the balance of the drive home. The complainant was telling you to stop and not to do it in front of the children. The children were upset and screaming at you to stop. Once home the complainant went to get out of the car but you again grabbed the back of her hair and held her preventing her exit. The complainant punched you so she could get out of the car. As she went to remove one of the children from the car you pushed her to the ground. As a result of these assaults the complainant suffered pain to her head and scalp and her shirt was ripped. I note not only did this violence occur in the presence of the children, who were clearly upset by it, but you were driving a car whilst assaulting the complaint thereby exposing both her and the children to risk of injury from a collision.
- Occasion 6 – on or about 1 February 2019, you returned to the family home having been at the local hotel. You were drunk and in a bad mood. You argued with the complainant. You walked up behind her, placed your arm around her neck in a headlock and applied pressure. Whilst you had her in a headlock you dragged her to the ground. You let go of the complainant whilst she was on the ground but as she went to get back up, you took hold of her hair and rammed her head into the front door of the house several times. You left the house and walked towards the complainant's vehicle. Concerned that you were going to take her car, she followed you and tried to retrieve the keys from the ignition. As she leant into the vehicle, you took hold of her head and pushed it into the dash area of the vehicle, with sufficient impact it damaged the air conditioning dial in the vehicle. As a consequence of this assault, the complainant's ear-rings were ripped from her ears, she had a cut to her right temple and swelling and pain to her head and scalp.
- Occasion 7 – on 26 April 2019, you were at the matrimonial home with the complainant and the children. The children were in bed. You became angry and began to yell at the complainant. You punched her to the back and sides of her head on multiple occasions and then spat on her. You pulled the complainant's hair. You grabbed hold of her shoulders and held her whilst you drove your knee into her stomach and chest area on multiple occasions. The complainant was struggling to breath. She laid on the bed. You stood up and kicked her to the ribs several times. They must have been heavy blows as the complainant suffered a fractured rib. The complainant was crying and having difficulty in breathing. You told her to not be so silly and picked up a cricket bat and swung it at her. She managed to grab

hold of it before it hit her. As a consequence of this assault the complainant suffered bruising to her arms, leg, neck and chest, and a fracture to her ninth left rib..

- Occasion 8 – between April and August 2019, when you and the complainant were in the lounge room, you became angry and began to yell at the complainant. You stood over her whilst she was seated on the couch. You placed your hands on her shoulders and pushed her down, pinning her onto the couch. You continued to yell at her. The noise woke your eldest child. He came into the lounge room and saw what you were doing. He begged you to get off the complainant. You released the complainant, and took your child back to bed, telling him on the way to "shut the fuck up". The fact you spoke to your child in this manner reveals, to my mind, the extent of your anger.

You moved out of the matrimonial home on 3 August 2019. Following the separation, the complainant started a relationship with another man, S. You also started a new relationship. In time S moved in with the complainant. In the weeks that followed separation you repeatedly called and messaged the complainant trying to repair the relationship. Your behaviour was persistent and demanding. In the later part of August 2019 you found out that the complainant had commenced a relationship with S. The intensity of your behaviour towards the complaint increased. In late August 2019 you attended the residence and raped your estranged wife. The circumstances of that were:

- Occasion 9 – you went to the residence and let yourself in. Your youngest child was present at home. You challenged the complainant about her new relationship. You said to her "if you can sleep with him, you can sleep with me". You then grabbed the complainant by the shoulders and pushed her backwards into the bedroom. You pushed her onto the bed. The complainant told you that she did not want to have sex with you. You responded by saying "yes you do, it's okay, chin up, we can do this for the rest of our lives". You then knelt on the bed next to the complainant, used one hand to pin her down whilst removing her pants and underpants with your other hand. The complainant was crying and trying to push you away. She was very clearly telling you that she did not wish to have sex with you. You ignored her protests telling her "Shhh, it's alright". You removed your pants, got on top of the complainant, forced her legs open and penetrated her vagina with your penis. You had sexual intercourse with her for about thirty seconds. During this time the complainant was continually crying and telling you to stop. You did not wear a condom and you ejaculated inside her vagina. After you had finished you asked the complainant why she was crying. She told you she did not want to have sex with you. You said "don't be like that, its good fun". You then left the house. Your conduct in raping her was degrading and humiliating. She made it very clear to you that she did not want to have sex with you, yet you used your greater physical strength to overcome her obvious resistance and forced yourself upon her in order to dominate and control her.

Between this occasion and when the complainant reported matters to police in late February 2020, you continued to attend the complainant's house and physically or sexually assault her. The complainant estimates you had sexual intercourse with her, without her consent, approximately 10 times. These incidents would occur when you knew S would not be at the house because he was away working. On each occasion you sexually assaulted the complainant you would attend her house and demand to have sexual intercourse with her. The complainant made it clear to you on each and every occasion that she did not want to have sexual intercourse with you. In response you would threaten her by saying that if she did not have sexual intercourse with you, you would tell S she had been unfaithful. You would say things like "what

would [...] think of you now, you're a filthy cheater". There were also occasions when you threatened both the complainant and S by saying you would "put bullets through them". You told the complainant that if she ever went to the police it would be the last thing she would do. The complainant was fearful of what you would do. She was scared that you would cause harm to her or S if you did not get what you wanted. Consequently when you demanded sexual intercourse from her, rather than try to resist and fight you off, she would submit to your demands for sexual intercourse. This was not a consent that was freely given. She submitted out of fear. Whenever sexual intercourse was forced upon her, the complainant would be upset. If she cried or looked unhappy you would say things to her like: "at least look like you're enjoying it"; "can you not be such a downer about it all the time". When you forced the complainant to have sexual intercourse with you, she would not actively participate but would merely submit to your acts out of fear. Her fear was grounded in her knowledge of your violent tendencies and also your threats to destroy her new relationship and cause harm to her and S. The other two specific occasions the complainant can recall you forcing sexual intercourse upon her are identified as occasion 13 and 14. They are as follows:

- Occasion 13 – between September 2019 and February 2020 you attended the residence one evening. You entered the house, sat down and refused to leave despite the complainant's request you do so. Your refusal to leave persisted and eventually the complainant said she was going to bed and went into her bedroom. You followed her in there and got into bed with her. She asked you to leave. She told you she did not wish to have sex with you. You refused to leave and had sex with her by penetrating her vagina with your penis, without her consent.
- Occasion 14 – on 7 February 2020 you and the complainant had taken your children to school as it was one of the children's first day at school. You returned to the residence where you had left your vehicle parked. You followed the complainant into the house. You refused to leave. You told the complainant that if she did not have sexual intercourse with you, you would tell S that she had been cheating on him. You had sexual intercourse with the complainant by penetrating her vagina with your penis, without her consent. On both of these occasions, I am satisfied the sexual intercourse only occurred because you had instilled sufficient fear in her that she felt compelled to succumb.

In addition to the sexual violence that occurred following separation, there were also a number of other incidents where you physically assaulted the complainant. These acts were part of an ongoing pattern of sexual, emotional and physical abuse. They are identified as:

- Occasion 10 – on an evening in September 2019 you travelled to the residence in your new partner's motor vehicle. When you arrived you were in a bad mood. You began to yell at the complainant. You pushed the complainant several times. You placed her in a headlock from behind and dragged her to the ground. Whilst she was on the ground you took hold of her hair and pulled her head up towards you. You then punched her numerous times to the back of the head. The complainant lost consciousness. You carried her to your partner's vehicle and drove her down the road a short distance before returning to the house. The complainant regained consciousness and managed to get out of the car and walk inside the house. You followed her in there, demanding that she apologise to you for "pissing you off and not treating you as a priority". Such a comment, in my view, is testament to your arrogant and brutish behaviour. Your assault upon the complainant left her with a large cut to the back of her ear which was bleeding freely. She also had swelling and pain to several areas of her head.

- Occasion 11 – in October/November 2019 you went to the residence to collect your eldest child for the day. You parked your car near a shed on the property. The complainant walked over to your car. You told her you were in a bad mood because you had been fighting with your new girlfriend. You then "hip and shouldered" the complainant by driving your shoulder and side into her, knocking her backwards. You continued to do this over and over again forcing the complainant into the nearby shed. You pinned her against the back wall of the shed, gripping her arm with one hand whilst using your other hand to punch her to the ribs. You eventually released her. She walked inside the house. You followed. You demanded to see her mobile phone and demanded she provide you with her pass code. When she refused, you took hold of the complainant with both hands and shook her violently causing the back of her head to strike the microwave. You then pushed her onto a nearby couch, got on top of her, placed your hands around her throat and squeezed. The complainant experienced difficulty in breathing. You told her that you were going to kill her as you were strangling her. Your eldest child was in the kitchen whilst this occurred and witnessed the violence you perpetrated upon his mother. He was pleading for you to stop. You did not do so immediately. It was only when the complainant's father arrived in his vehicle at the house that you stopped. When the complainant threatened to tell her father what you had done, you began to cry and begged her not to say anything. You asked the complainant to "help" you. As a result of this assault the complainant had general bruising to her body, finger mark shaped bruising to her arm where you had taken hold of her and general pain and soreness over different parts of her body.
- Occasion 12 – on Christmas Day 2019 you attended the residence. You were angry when you arrived. You began to yell at and argue with the complainant. You pushed the complainant several times. You grabbed hold of her and held her close to you for a short period, whilst yelling at her. You then left the house. She did not suffer any injury as a consequence of this assault.

The complainant reported matters to police on 25 February 2020. I suspect there were many reasons why the complainant may have been reluctant to complain before this. The relationship, given its duration and the fact it had borne four children, was affected by many complicated, and many subtle factors which impacted such decisions. The complainant's desire to protect her children from the true extent of their father's behaviour was one such factor. The defendant was interviewed on 24 February. He admitted to some violence, but denied he had raped the complainant or threatened or coerced her into having sexual intercourse. He did accept however that on one occasion the complainant told him they should not be having sex and should stop. He told her that if she wanted to stop doing it, he would "come out and tell everyone what's been going on". He admitted he became so angry on occasions that he felt like he was "out of control".

Mr A, your behaviour towards the complainant was appalling. You caused her physical harm, but beyond that, you treated her with disdain. You had no compunction in sexually assaulting her and denying her the right to be treated decently and with dignity. You treated her like she was merely your possession over which you were entitled to exert dominance and control. I have carefully considered the impact statement of the complainant. It is a detailed and eloquent description of the very devastating effect your crimes have had upon her and the children. It is clear that her life has been deeply and perhaps irreparably damaged. She is beset by constant fear, vivid flashbacks and nightmares, anxiety and self-doubt. She experiences guilt because of the deleterious effect your crimes have had upon the children. She has been diagnosed with

post-traumatic stress disorder as a result of the violence you perpetrated upon her. The ongoing impact will be long-term and the true effects probably immeasurable. It is a heavily aggravating fact that violence was perpetrated in front of the children, particularly your eldest child who felt it necessary to intervene to try and protect his mother. The long-term consequences for children who witness family violence can be devastating. It is now well understood that being exposed to family violence in a child's formative years can have a significant adverse impact on their development and psychological well-being. The true extent of the damage you have done to your children is unlikely to be appreciated or understood for many years.

There are a number of aggravating features of your crime. Much of your behaviour occurred in front of the children, either within the residence or within the motor vehicle. On occasions your children were screaming at you to stop hurting their mother and were clearly upset by having to witness your behaviour. As I have noted, on one occasion your eldest child felt it necessary to intervene to try and help. You responded by abusing him. This is a significantly aggravating feature of your crimes, in my view. On another occasion your offending placed a child at risk because the child was in his mother's arms when you assaulted her. On another occasion you assaulted the complainant while she was pregnant. Your violence included many blows to the complainant's head. Punching another to the head is inherently dangerous. A single blow can, and often does, cause serious injury, even loss of life. On occasions you delivered multiple blows to the complainant's head. On one occasion she lost consciousness. Other aspects of your physical assaults were also particularly serious. You applied pressure to her neck and throat during some of the assaults causing her to have difficulty in breathing. It is obvious that any conduct which obstructs breathing is fraught with risk. It can cause serious injury and may lead to death. It is now well documented and accepted that acts of choking, particularly in a family violence context, are extremely dangerous and likely to be productive of long-term psychological and physical impact. I note the comments of Estcourt J in *DPP v Foster* [2019] TASCCA 15 at [26]-[27]. Respectfully, I agree. The manner in which you placed the complainant in a headlock and applied pressure to her throat with your hand were yet further examples of your desire to exert power and control over her. On one occasion when you were choking her, you told her you were going to kill her. I have no doubt she believed that was a real possibility.

The repeated and consistent nature of the violence, within the context of ongoing emotional and psychological abuse, exacerbated the trauma experienced by the complainant on each occasion she was exposed to your violence. These were not isolated incidents. It cannot be said that you reacted in an out of character manner or had an unjustified adverse reaction to a particular circumstance. Rather, you persistently targeted your wife knowing that on each occasion you were re-exposing her to the trauma of violence. Your behaviour must have, in my view, created a situation where she felt overwhelmed and powerless. The frequency and persistence of the violence over the course of a very long period of time – approximately ten years in duration – added to her trauma. You abused the trust inherent in a marriage. You abused the trust inherent in fatherhood. Many of the assaults occurred in the family home where she and the children were entitled to feel safe and protected. Towards the end of the time you were living together your violence towards her escalated. Following separation it escalated further to include sexual assaults. These sexual assaults were particularly degrading and humiliating. The timing of the sexual assaults is reflective, in my view, of your desire to maintain control and dominance over the complainant and her life. She had begun to move on. She had formed a new relationship. I am satisfied you were unable to accept that she was creating a new life for herself with a supportive partner. The rapes were directed at reminding her she could not free herself from you. I take into account that the latter two specified rapes

which have been identified did not involve physical violence, beyond that which was associated with the act itself. To my mind, however, that matters little. You used a pattern of violence, coercion and threats to extinguish her will such that she felt compelled to submit to your demands. I have no doubt your degrading and domineering behaviour left her completely demoralised. In noting the significant effect your sexual violence had on the complainant, I do not overlook the fact she also suffered serious physical injuries, including a fractured rib, and on several occasions was left with considerable bruising, pain and general soreness.

You are now 32 years of age. I take into account that you were only a relatively young man when this offending commenced, but by the height of the offending you were certainly old enough to appreciate the severity of your behaviour. You have one relevant prior conviction. In June 2019 you were convicted of a matter of common assault. That offence was committed against your mother. It involved you grabbing her by the throat, holding her down on the couch and punching her twice to the head and once to the leg and squeezing her face. That behaviour is not dissimilar to some of the violence you perpetrated upon the complainant. It is noteworthy that the act of violence against your mother occurred in the context of the ongoing violence you were perpetrating upon the complainant. Beyond that matter, you have no other relevant criminal history but, in my view, that counts for little, when you bear in mind the length of time over which you were perpetrating criminal violence against the complainant.

Sadly, you were raised in a household where family violence was common. I am told both your mother and father were heavy users of alcohol. Your father was absent from the home frequently. When he was there, you recall there was regular conflict, both verbal and physical between your parents. There was one occasion where your father struck your mother with such force that it caused her eye socket to shatter necessitating surgical intervention. I am told the violence you observed in your formative years has had a significant traumatic impact upon you. Your parents separated when you were in your early 20s. Thereafter the family largely fractured and sibling relationships were lost to you. You now have limited contact with many family members. You have no contact with your father and a poor relationship with your mother.

You finished school and went on to successfully complete an apprenticeship in a trade. You have always been gainfully employed. You are currently employed. It is a position of some responsibility, managing a large number of employees. I have read and have regard to a letter provided by your employer. You are obviously well regarded in your employment. You have formed a new relationship. You have been in that relationship for approximately 2½ years. I am told that relationship is not marred by family violence but rather is a close and supportive one.

It is necessary to consider what mitigatory value, if any, your plea of guilty should carry. You initially entered a plea of not guilty. I am told the State were advised in July 2021 there would be a plea of guilty to the charge of persistent family violence. It was entered in August 2021, but with an indication a number of the specific occasions alleged were disputed. The matter was listed for a disputed facts hearing. The complainant and other witnesses were briefed for the disputed facts hearing and indeed the complainant gave her evidence-in-chief on the disputed facts hearing. She was not subject to cross-examination. The complainant has experienced the anxiety and apprehension associated with having to give evidence in this matter. It was obvious during the giving of her evidence that she was traumatised by having to recount the events. You are entitled to some very limited credit for saving the complainant the trauma of being exposed to the potential unpleasantness of cross-examination. I also take into account that your plea of guilty meant the matter proceeded as a disputed facts hearing as

opposed to a trial, thereby obviating the need for the complainant to give her evidence in front of a jury, and saving the Court the cost and inconvenience of a full trial. Ultimately your plea of guilty and acceptance of the complainant's account of events provides her with a level of vindication, albeit at a very late stage.

In July 2020 you commenced a program directed at educating perpetrators of family violence. You paid a considerable sum of money to participate in the program. The program encompassed 42 sessions. Through your Counsel, you say you enrolled in the program because you recognised the seriousness of your behaviour and wanted to change. You have completed 14 of those sessions. I am told you ceased attending the sessions when your employment became busy. You intended to resume participation in the program, and had made arrangements to take some leave from work to enable you to do so, but this sentencing matter has intervened. The fact you enrolled in such a program is perhaps indicative that you have begun to develop some insight into just how appalling your behaviour was. Obviously, however, your insight was not so compelling as to lead you to prioritise the program above other commitments. I take into account the expression of remorse you instructed your counsel to convey to the complainant and to your children during the plea in mitigation. That apology may offer some level of comfort to the complainant, which is relevant. But, in my view, it carries little mitigatory value. Your violence towards the complainant went on for a very long time. At times you expressed regret to her for how you behaved, but you did nothing about rectifying your behaviour. When she looked to be moving on from you, you sought to solidify your control and dominance of her, by escalating the severity of your criminal behaviour. Up until a very late point in the proceedings, you did not acknowledge the complainant's account as a truthful one. I do not consider that any purported expression of remorse weighs in favour of leniency.

In my view this is an exceptionally serious matter, and there is very little which mitigates your conduct. For the best part of a decade you embarked upon a course of conduct that involved degrading, domineering and violent behaviour towards your wife. Your conduct deserves severe punishment. Family violence is quite rightly of great concern to the community. It deserves condemnation and will not be tolerated by the courts or the community. Because of the insidious nature and controlling effect of persistent family violence it often does not come to light until the victim had endured many years of private suffering, and that of course is very much the case here. The sentence I impose upon you must offer a proportionate response to the harm that has been caused to the complainant, and reflect the extent of your criminality. Obviously principles of denunciation, general deterrence and vindication of the complainant are paramount sentencing considerations. The Court has an obligation, in my view, to impose a sentence that is sufficiently heavy to be effective in deterring other people who may be minded to act in a similar manner. This is essential in the Court fulfilling its obligation to reflect the broader community's increased intolerance for family violence.

The appropriate way to approach sentence in a crime of this nature is to ensure the defendant suffers the same penalty as he would have suffered, had the penalty been imposed in respect of the individual acts of assault and rape which constitute the crime of persistent family violence, whilst making appropriate adjustment to the final sentence to acknowledge principles of totality. The final sentence must be a just and appropriate response to the aggregate of the defendant's criminal offending and reflect his overall culpability. In sentencing in that manner, I do not lose sight of the fact that the individual unlawful family violence acts occurred in the context of a course of conduct involving many other unspecified acts over a period of some ten years. The defendant of course is not to be sentenced for uncharged criminal conduct, but

equally he cannot be sentenced on the basis that the specified individual unlawful family violence acts occurred in isolation.

Taking into account all those matters, I make the following orders:

- Pursuant to s 13A of the *Family Violence Act* I direct that the crime be recorded on your criminal record as a family violence offence.
- I make a family violence order for the protection of the complainant in the same terms as the family violence order made in the Magistrates Court on 11 November 2021, save that conditions 14 to 21 will be deleted. They are the conditions which relate to electronic monitoring. The family violence order will remain in force until varied or revoked by a court of competent jurisdiction.
- N A, you are convicted and sentenced to imprisonment for a period of 10 years. That sentence will commence on 4 February 2022 to take into account time already served in custody. I will make allowance for parole. I order that you are not to be eligible for parole until you have served one half of the sentence.
- I decline to exercise my discretion to make an order under s 7 of the *Community Protection (Offender Reporting) Act*. I am satisfied that given the length of sentence, the possibility that the latter part of the sentence will be served whilst under the supervision of parole, and the enduring Family Violence order, that any risk as defined in that section is insufficient to justify the making of an order.