

R v WADE KURT SILVER
COMMENTS ON PASSING SENTENCE

23 OCTOBER 2003
BLOW J

Mr Silver has pleaded guilty to manslaughter. On the night of 26 February 2003 he unlawfully assaulted another man by punching him. The man fell to the ground, hitting his head, and suffering a head injury from which he died the next day.

Mr Silver had had an argument with his girlfriend, and had been drinking. He and a friend had left a hotel, and were walking together through the streets of Launceston, on their way to visit someone's home. They were joined first by a man named Ryan, and then by the deceased, Mr Emms. Ryan instigated a scuffle with Mr Silver, but they were separated by Mr Silver's companion, and Ryan went away. Thereafter Mr Silver apparently said something to Mr Emms, whereupon Mr Emms turned and faced Mr Silver, who then hit him. It was at that point that Mr Emms fell, hitting his head, and suffering the fatal head wound. An eye-witness observed that Mr Emms made no attempt to break his fall. It seems possible that that was because he had had too much to drink. A post-mortem toxicology test revealed that his blood alcohol content was 0.286 per cent.

This incident occurred at about 10pm. Mr Emms remained unconscious from the time he hit the ground, and died early the following afternoon. He has been survived by a widow and two daughters, all of whom saw him in hospital prior to his death. They have all needed counselling as a result of their extreme grief. They have lost a loving husband and father. The emotional effect on each of them has been substantial, and continues to be substantial. The widow has had the burdens of winding up her husband's business and administering his estate, and will have to sell some land in the country that she can no longer afford to keep. The financial consequences for the dead man's family have been substantial.

Mr Silver has some relatively minor prior convictions. The most serious was for breaching a restraint order. That related to family difficulties. A community service order was imposed.

The crime of manslaughter is a very serious one, particularly when it involves violence on a public street, but there are a number of matters that I must take into account in Mr Silver's favour. He was only 20 years old on the night in question. He has not been to prison before. He has no convictions for anything involving violence. His attack was unplanned. He threw a single punch. He did not intend to cause any serious injury, let alone death. He was shocked to see that his victim had been seriously injured. At the scene, he tried to do something for his victim by taking off his shirt and placing it under his victim's head. That did no good at all, but it shows that he wanted to undo what he had done. He did not attempt to flee but remained at the scene until ambulance officers told him to leave. He was cooperative once found by the police. He has pleaded guilty at an early stage. On the night in question and ever since, he has sincerely regretted doing what he did, and causing a man to die.

Mr Silver threw an unplanned single punch with no intention of causing any serious harm. Looked at from that perspective, his conduct involved only a low degree of criminality. But his conduct caused the death of an innocent man, and the bereavement of that man's wife and children. Looked at from that perspective, the evil consequences of this crime were most extreme. The result is that an appropriate sentence must be one that is severe for a single punch that was not intended to do any harm, and lenient for a crime causing a person's death. The sentence that I am about to impose is designed to achieve a balance between the

competing considerations, but is likely to be considered inadequate by anyone who concentrates on the consequences of the crime, rather than the degree of criminality of the offender. Because Mr Silver has no prior convictions involving violence, I will impose a non-parole period close to the minimum.

Wade Kurt Silver, I convict you and sentence you to two years' imprisonment with effect from 27 February 2003. I order that you be ineligible for parole until you have served 13 months of that sentence. I order you to pay a victims of crime compensation levy of \$50 within 28 days after your release from prison.