

Garry Clarke, you have pleaded guilty to aggravated assault contrary to s 115 of the *Criminal Code* and the *Firearms Act* respectively. The charge involves an assault by threatening gesture by pointing an object resembling a firearm at the complainant and threatening to shoot him in circumstances whereby you caused the complainant to believe you had a firearm and an immediate ability to affect your purpose, namely shooting him, when, in fact, you did not have a real firearm and had no capacity to discharge a firearm. Section 115 of the *Firearms Act* provides that a person commits an aggravated assault contrary to s 183 of the *Criminal Code* in various ways including, if during the course of an assault as defined in the Code, the person carrying out the assault, threatens to use a firearm, whether or not the person was actually carrying a firearm. They were the circumstances here. The relevant background is that you and the complainant lived in neighbouring properties. Up until about a month before the incident you had been on friendly terms. The day before the incident, you had been involved in an altercation with the complainant's dog. You sustained injuries as a consequence. In the early hours of the following morning, 8 August 2020, the complainant's front window was broken when a rock was thrown through it. The complainant confronted you about it. You denied any involvement, but nevertheless a heated verbal exchange occurred. From around 4.08 that morning, you sent a series of text messages to the complainant, threatening him. You said things like "..... I'm going to smash your fucking head in"; "I'm going to smash you like you've never been hurt before"; "I will blow your windows out when your daughter is not there"; "You're the one who is going away. Should have killed you when Tina asked me too"; "I told you, you're going under the ground where we put Lester Lee". This last comment was a reference to a local person who was missing and presumed dead.

The complainant replied to some of these messages, telling you to go away. You then sent the complainant a picture of a firearm. Accompanying the picture of the firearm were further threatening messages, suggesting you were going to use the firearm to shoot the complainant at his residence. You attended the residence on foot, holding a thin, long object covered by a white sheet. You positioned yourself in front of the residence and held the object as if it was a firearm. You pointed the object towards the residence and yelled "This is what you're fucking gunna get..... I'm going to fucking shoot you."

The complainant observed your behaviour. He was fearful for the safety of both himself and his daughter, who was staying with him. He believed, particularly given the threats you had already made, that you were in fact holding a firearm and would shoot him.

Police were contacted. You were subsequently arrested. Whilst with police, you made further threats towards the complainant. You identified to police the object you had used. You said to police "I did make it look like a firearm".

I have read the Victim Impact Statement of the complainant. He was distressed by your behaviour and genuinely believed he and his daughter were at risk. The experience has had a significant debilitating affect upon his daughter in particular. After the incident, she refused to come and stay with her father. This, in turn, has caused the complainant considerable upset as he has been denied the opportunity to spend time with his daughter. Your behaviour has caused significant emotional harm for both the complainant and his daughter.

It is, of course, a most significant factor that you were not armed with a real firearm when you made the threats to shoot the complainant and did not have the capacity to cause them actual physical harm. Nevertheless, it was undoubtedly a traumatic and stressful experience for the complainant. You are now 53 years of age. Your criminal history is far from pristine. You have a number of prior convictions for matters of violence, including common assaults, assaulting a police officer, assaulting a pregnant woman and ill treatment of a child. This is the eighth occasion upon which you have appeared before courts for matters of violence. You also have prior convictions for threatening police. You do not have any prior convictions under the *Firearms Act*. Your record nevertheless is one that suggests a general disregard for the law and your obligation to comply with it. You are in a stable relationship of some 25 years, although I note there is a recorded history of family violence between you and your partner. You retain the benefit of her ongoing support. You share eight children together. Two of those children currently live with you. You are in poor health. You suffer from some form of bacterial meningitis. You are heavily medicated for this, and I am told it is likely there will be a need for surgery in the future. One of your children has recently returned to live with you. He has provided a letter to the Court. I note the contents of that letter and whilst I acknowledge the sentiments expressed within it, the law is clear as to the role impact upon family has within the sentencing exercise. It is not generally mitigating. The impact your behaviour has had upon your family is a matter you ought to have considered before you committed this crime.

I am told the irrational nature of your conduct occurred in the context of the relationship between you and the complainant becoming most difficult in the preceding months. It culminated with the altercation that occurred with the complainant's dog, the day before. I accept that you were badly injured as a consequence of that altercation, you ruminated on it and foolishly decided to act as you did. Whilst I accept the period of offending was brief, it cannot be described as spontaneous. You took the time to send the text messages and picture of the firearm so as to ensure the complainant was primed to believe the object you pointed at his residence was a firearm. It was, in my view, most spiteful behaviour. I take into account your plea of guilty. Whilst it was entered at quite a late stage, it nevertheless retains utilitarian value and has also saved the complainant the trauma of giving evidence. I am told that since this incident, you and the complainant have resolved the issues between the two of you. You continue to live in neighbouring properties but your relationship is now quite amicable.

In formulating sentence, I take into account the seriousness of the offending. Any level of threat by firearm is to be condemned, although of course I sentence on the basis this was not a real firearm and therefore physical harm could not have been occasioned. Nevertheless, the sentence I impose must reflect the need for both personal and general deterrence. I had you assessed as to your suitability for home detention. The history of family violence between you and your partner means you are unsuitable for such an order. In all of the circumstances, I have determined that the crime is serious enough to warrant the imposition of a term of imprisonment. I make the following orders. You are convicted of the crime. You are sentenced to a period of nine months' imprisonment. The last six months of that period of imprisonment is suspended for a period of 18 months on condition that you are not to commit a crime punishable by imprisonment during that period.

I make an order that the item used by the defendant in the commission of the crime be forfeited to the state. I note it has a minimal value. I make a compensation order in favour of Paul Martin, the terms of which will be adjourned sine die.