

STATE OF TASMANIA v JAIDEN ALLEN PHILLIP FORD-WINTER

24 OCTOBER 2022

COMMENTS ON PASSING SENTENCE

JAGO J

Jaiden Ford-Winter, you have pleaded guilty to a charge of causing grievous bodily harm contrary to s 172 of the *Criminal Code*. On Saturday, 15 May 2021 you were part of a group of people gathered in the Patterson Street car park in Launceston. You were speaking to a Mr Clark and a Mr O'Loughlin, who were seated in a motor vehicle. Whilst you were talking to these men, the complainant, Mr Hannes, entered the Patterson Street car park. You called out to him and a verbal exchange took place. Mr Hannes was, in fact, on the phone to his sister-in-law at the time the verbal exchange occurred. You were heard to say words to the effect of "*You dropped your phone. Pick up your phone you cunt*". You told Mr Clark that you were "*Gunna smack this cunt*". Mr Clark told you not to and informed you that the complainant had been in a car accident some three weeks earlier and had suffered a bleed to the brain. You responded to this information by saying "*Nah, I was only joking*".

A short time later you again yelled at the complainant saying "*I'm gunna ruin you cunt*". The complainant approached you and offered you a cigarette. You took the cigarette from him and as he turned to walk away, you struck Mr Hannes to the jaw. The blow was without warning and immediately rendered Mr Hannes unconscious. He fell to the ground, striking his head hard as he did so. Mr Hannes was unconscious for several minutes and an ambulance was called. He sustained very serious injuries. He experienced a significant traumatic brain injury and a right side extra dural haematoma. A right sided craniotomy and evacuation of the extra dural haematoma had to be performed. He was left with a number of deficits, including significant post-traumatic amnesia and he was hospitalised for a period of approximately one month.

The incident was captured on CCTV footage. When you were arrested, you made some admissions. You said you had elbowed Mr Hannes. You pleaded guilty to a charge of code assault at your first appearance in the Magistrates Court and were committed for sentence to this jurisdiction on that charge. An indictment charging causing grievous bodily harm was subsequently filed by the State on 4 March 2022. After receiving some legal advice, you pleaded guilty to the charge on the indictment. It is to your credit that you have pleaded guilty at an early opportunity. The State accepts your plea of guilty on the basis of subjective

recklessness. That is, that you knew grievous bodily harm was a likely consequence of your act and did the act regardless of that risk. It is not suggested that you intended to cause the harm you did, rather it seems that this was a very foolish, impulsive crime arising from an extreme state of intoxication. That, of course, provides no excuse whatsoever. There was absolutely no need for your attack upon Mr Hannes. You have caused him very serious injury and have left him with ongoing debilitating consequences.

I have received a Victim Impact Statement from the complainant. It describes the confusion and loneliness he felt upon waking up in the hospital. He was unable to recognise his immediate family. He was unable to speak with them. Because of the time he spent in hospital, he lost his rental property. He subsequently had to relocate from Tasmania and live with family on the Gold Coast. He has been left with continuing symptoms such as poor motor skills, limited speech and vocabulary. His mental health has been significantly impacted. He constantly suffers from stress, headaches and anxiety. He has been financially impacted. He has not been able to work since the attack and has had to resort to using superannuation funds. He has been left with a significant scar that runs from the front of his head to the rear of his head. He struggles with seeing that every day. He has ongoing psychological difficulties, which he often finds quite overwhelming. There is no question the consequences for Mr Hannes have been just awful.

You are now 22 years of age, you were 20 when this crime occurred. You have no relevant prior convictions. You successfully completed Grade 10 and since then have been working in the forestry industry. You are well regarded by your employer. You experienced one night in custody when there was some confusion over a bail order. You found that a very salient experience, but otherwise have not been subject to any form of custody. I am told you now appreciate just how appalling your behaviour was. You recognise the serious harm you have caused Mr Hannes and are remorseful for it.

I had you assessed as to your suitability for a Home Detention Order. The report I have received confirms that you acknowledge the seriousness of your behaviour and have expressed regret over it. You are assessed as suitable for home detention. You can live with your father who can provide you with additional support. As noted, you were exceptionally drunk when the incident occurred. At that stage in your life, you were binge drinking heavily most Friday and Saturday evenings. As I have said, that in no way excuses your behaviour, but it is relevant

that the catalyst for the crime was excessive alcohol consumption and if sentenced to a Home Detention Order, you will be prohibited from consuming alcohol. You understand that and are willing to participate in a Home Detention Order.

I sentence on the basis that this behaviour was out of character for you. You have not shown a propensity for violence in the past. Your early pleas of guilty to both the original charge and the charge upon the indictment are consistent with you being remorseful and being prepared to take responsibility for your wrong doing. That counts in your favour.

Clearly the sentence must reflect the seriousness of the crime and the grave harm you have caused. Deterrence and denunciation are weighty considerations, but I cannot ignore your still young age, your lack of relevant criminal history and your prospects for rehabilitation. Maintaining your employment will enhance your likelihood of rehabilitation in my view and that, in turn, enhances the community's interests.

After careful consideration I am satisfied that you can properly be sentenced to a sanction other than immediate imprisonment. In *DPP v Pearce* [2015] TASCCA 1, Pearce J, with whom Blow CJ and Porter J agreed, said at [13]:

"The crime of causing grievous bodily harm does not necessarily require a sentence of actual imprisonment in every case. The sentencing data available to me lists numerous examples of the imposition of wholly suspended sentences for the crime, commonly with terms between six and twelve months and sometimes longer".

In my view, a wholly suspended period of imprisonment would be inappropriate, but I am satisfied a Home Detention Order meets all of the relevant sentencing requirements here. A Home Detention Order has both punitive and rehabilitative aspects. It involves a substantial burden and a material deprivation of liberty, which for a young man of 22 years, will be harshly felt. As was said in *DPP v King* [2020] TASCCA 8: Home detention is far from a lenient punishment. It carries with it a considerable measure of deterrence and denunciation and it is therefore effective as a general deterrent.

I impose a Home Detention Order for an operational period of 18 months from today. The order will include the following conditions which will apply for the whole of the operational period:

- 1 You must not commit an offence punishable by imprisonment.
- 2 You must reside at **[address redacted]**.
- 3 You must be there at all times, except when you are not there for a "relevant reason" as specified in s 42AB ss 4 of the *Sentencing Act* 1997, this includes going somewhere, including going to your employment, with your probation officer's permission.
- 4 You must permit a probation officer, a police officer, or other prescribed officer to enter these premises.
- 5 You must permit a police officer to conduct a search of the premises, conduct a frisk search of you and take a sample of any substance found on the premises or on your person.
- 6 You must submit to electronic monitoring, including the wearing or carrying of an electronic monitoring device.
- 7 You must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- 8 You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- 9 You must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring device, including directions relating to the installation, attachment or operation of the device, or system used for the purpose of electronic monitoring, if those directions are given to you by a police officer, a probation officer, another prescribed officer or any other person whose functions involve the installation or operation of a device or system used for the purpose of electronic monitoring.
- 10 You must maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through that device at all times.
- 11 You must not take any illicit or prohibited substances.
- 12 You must not take any medication containing an opiate, benzodiazepine, buprenorphine, hydrochloride or pseudoephedrine unless you provide written evidence from your medical practitioner that you have been prescribed that medication.
- 13 You must not during the operational period of the order consume alcohol and you must, if directed to do so by a police officer, or community corrections officer, submit to a breath test, urine test or other test for the presence of alcohol.

14 You must submit the supervision of a Community Corrections Officer as and when required by that Officer.

I order that you must attend the Community Corrections office at 111 Cameron Street, Launceston at 10 am tomorrow for the fitting of the electronic monitoring device and induction in respect to this order.