

STATE OF TASMANIA v KAYDON POOLE
COMMENTS ON PASSING SENTENCE

7 DECEMBER 2022
JAGO J

Mr Poole, you have been found guilty by a jury of one count of assault, contrary to s 184 of the *Criminal Code* as an alternative to a charge of causing grievous bodily harm contrary to s 172 of the *Criminal Code*. You were found not guilty of a second allegation of assault. It is for me to make findings of fact. I may only make findings adverse to you if satisfied of those matters beyond reasonable doubt. I may make findings in your favour if satisfied of the same on the balance of probabilities. I am also dealing pursuant to s 386A of the *Criminal Code* with your pleas of guilty to three summary charges, namely stealing a tobacco pouch on 24 April 2021 and also two counts of possessing a thing used for the administration of a controlled drug.

In terms of the factual basis for sentencing, I am satisfied of the following.

Around 6.30 pm on 24 April 2021, you went to your neighbour's unit. There, you consumed a considerable amount of alcohol. As the evening progressed and you became more intoxicated, your level of aggression increased. You became agitated about a relationship break up and a new relationship that your ex-partner had apparently formed. You were dancing around and behaving erratically. You started making comments about a previous episode of violence with which you had been involved. The complainant, who had been sitting approximately two to three feet away from you, got up at one point to go to the bathroom. Because you had been dancing around throughout the course of the night and making some theatrical gestures, he believed he observed you make a swinging motion towards him. He reacted by endeavouring to take hold of you and place you in a head lock. I am satisfied he was unsuccessful in doing so and you quickly overpowered him and forcefully pinned him to the ground. I am satisfied his attempted headlock had no adverse effect upon you. Once he was on the ground, you pinned both of his hands down by his side by kneeling upon them and then proceeded to punch him forcefully several times to the face. I note the complainant said there were 14 blows. I cannot be satisfied beyond reasonable doubt there were, in fact, 14 blows, but I am satisfied beyond reasonable doubt that there were several blows. It is impossible to determine a numerical amount.

Your actions were entirely unjustified and an excessive response to what was a relatively benign, fleeting and understandable reaction from the complainant, particularly bearing in mind the escalation of your behaviour throughout the course of the evening. I am satisfied beyond reasonable doubt that your response was driven by anger and retaliation and not because of an honestly held belief that you needed to defend yourself.

As a consequence of the assault, the complainant had large hematomas on both eyes and he had swollen lips. There was a cut to the inner lip and he had pain to the right lower back. Further examination disclosed sub-conjunctival haemorrhages, that is, bleeding between the membrane lining of the front of the eye socket and the eye ball. A CT scan showed displaced fractures involving the bones of both eye sockets and fractures of the nasal bones. Surgery was suggested for the displaced nasal bones. Corrective surgery did not, in fact, for a number of reasons, occur. The complainant continues to have breathing difficulties and also has some double vision.

I have read the Victim Impact Statement provided by the complainant. The complainant suffers from autism and has been affected by this crime markedly. He now has significant trust issues and struggles to form new relationships. He was scared to continue to live in the same unit

complex as you. He has moved away. He experienced difficulties following that move and is now essentially homeless. Physically, he continues to experience nose bleeds and struggles to breathe. He gets migraines regularly and continues to have issues with his eye sight. Parts of his face are numb to the touch. He found giving evidence at the trial a very traumatic experience. There is no question that he has been significantly adversely affected by your crime.

You were 21 years of age when you committed this crime and are now 23. When this crime was committed, you were on bail for another very serious crime. In January 2019, you committed an assault. That matter was committed to the Supreme Court in June of 2020. The matter I am now sentencing you upon was committed whilst you were awaiting disposition of that matter. In August 2021, Brett J sentenced you for the crime of assault to a 12 month period of imprisonment, all of which was suspended on condition you not commit another offence punishable by imprisonment and that you comply with the supervision of a probation officer. Obviously, that sentencing order is not a prior conviction for this matter, but the fact that you were on bail for a crime of violence when this act of violence occurred is, in my view, a relevant consideration.

In addition to that matter, you also have a significant record of criminal offending for matters of dishonesty, driving offences and bail offences. In May 2019, you were convicted for two counts of common assault. They involved striking a complainant to the face. In April 2020, you were sentenced to a period of six weeks' imprisonment, wholly suspended, for various bail offences and driving offences. You breached the terms of that suspended sentence and it was subsequently activated in July of 2020.

I am told that you experienced considerable upheaval during your upbringing. Your mother was a heavy user of alcohol and you were exposed to that. Your parents separated when you were young. Your father who cared for you following the separation, passed away when you were 11. Understandably, you struggled to deal with your feelings of anger, hurt and grief at such a young age. Thereafter, you were cared for by your older sisters, who themselves were only young adults. There was considerable instability in your upbringing and your education suffered because of it. You have also developed difficulties in terms of excessive alcohol use and illicit drug use. I note you have held various casual positions of employment since leaving school. You retain the support of family members and you have the possibility of employment with one of your brothers upon your release from custody.

General deterrence is a weighty consideration in the sentencing exercise. You and the broader community must understand that those who seek to use violence to resolve conflict will face serious consequence. Violence of this nature is all too common amongst young people and simply unacceptable. Striking someone to the face and head area is inherently dangerous. Even a single punch can, and often does, cause serious injury. Here, there have been significant consequences for the complainant. You, of course, are not to be sentenced on the basis that you intended or indeed foresaw the specific consequences, but of course physical injury is almost always the consequence of blows such as those delivered by you. And of course, this is not the first time you have resorted to the use of violence.

There is no question the seriousness of this crime requires the imposition of a sentence of imprisonment. I make the following orders:

Mr Poole, you are convicted of all matters to which you have been found or pleaded guilty. In respect to stealing and two counts of possess thing used for the administration of a controlled drug, I make no further order.

In respect to the crime of assault, you are sentenced to 14 months' imprisonment, backdated to commence on the 22 August 2022, when you were taken into custody. I order that you not be eligible for parole until you have served one half of that sentence of imprisonment.

I make a compensation order in favour of the complainant, the terms of which will be adjourned sine die.

I make a forfeiture order in favour of the State in respect to the two smoking devices.