

Mr Booth, you have pleaded guilty to two counts of aggravated assault and one count of recklessly discharging a firearm. You have also pleaded guilty to associated summary offences. Those are one count of possessing a firearm without a licence, one count of possessing that firearm while loaded, one count of breaching an interim family violence order and a further count of breaching bail conditions, both committed by your possession of the firearm, and finally one count of possession of cannabis.

The crimes and offences were committed on 25 August 2020 and all arise from the following circumstances. At around midday on that day, you dropped your brother at his home, which was then next door to the residence of one of the complainants, a 14-year-old male. His uncle, who is also a complainant, and with whom you have had long-standing animosity, was present and obviously saw you when you dropped your brother off. He approached your vehicle in an aggressive way, inviting you to "have a go now". You drove away, but soon returned and yelled at him, expressing a similar sentiment. At that point, the teenage complainant threw a golf club at you. It struck the back of your car. You again drove away but came back a few minutes later. You were in possession of the shortened firearm. It has been put by you, and accepted by the prosecution, that the firearm was loaded with blank ammunition. During the hearing, I expressed some scepticism about this, but in the circumstances and given the lack of contrary evidence or any opposition by the prosecution, I think I must sentence you on this factual basis. Of course, I was not given any explanation as to what is meant by "blank ammunition", nor as to whether the discharge of such ammunition is capable of causing injury. I will proceed on the basis that, at the very least, it does not involve the firing of a projectile from the weapon.

In any event, you clearly came back to the house with the intention of using the firearm to confront both complainants. You walked towards the complainant's house holding the firearm. You first saw the 14-year-old complainant and chased him, pointing the firearm at him and yelling "I'll shoot you, I'm not mucking around". This constitutes the crime of aggravated assault, to which you have pleaded guilty on count one. When the adult complainant became aware of what was happening, he went towards you with a cricket bat. He was yelling at you that you should leave, and not attack the women and children. You walked towards him and at a distance of approximately 2 or 3 metres from him, pointed the firearm at him and threatened to shoot him. This constitutes the crime of aggravated assault, to which you have pleaded guilty on count two of the indictment. It seems that your brother then got involved in the altercation, but you returned to your car and drove away. As you were doing so, the adult complainant threw the cricket bat at your car, hitting it. You stopped and got out of your car, again holding the firearm. You walked towards the complainant, pointed the firearm in his general direction and discharged it. It is accepted by the prosecution that you did not discharge the firearm directly at the complainant. I have already indicated that the shot discharged was from a blank cartridge, and therefore, you did not fire an actual bullet.

You then left the area. Police eventually located you hiding in a friend's house. They found you in possession of cannabis at this time.

There are some very serious aspects of your criminal conduct. I have received impact statements from both victims. I treat the statements with the usual circumspection, and take into account that they were both involved in escalating this confrontation. I think that the adult complainant

must certainly take some responsibility for this, given that he started the confrontation when you were simply dropping your brother at his home. The 14-year old was probably just following the poor example set by his uncle, but there was also an element on the part of both complainants of reasonably responding to the fact that you had returned to the area with a weapon, thereby significantly escalating the confrontation. I do not intend to say anything more about the rights and wrongs of this dispute, it was juvenile at best and the actual confrontation on this day was completely unnecessary.

The more concerning aspects of your conduct are your possession of a loaded, shortened firearm, the introduction by you of that firearm into the dispute and then your use and eventual discharge of it in a public residential area. The unlawful possession of firearms in our community is a grave social problem. It contributes to and facilitates dangerous criminal conduct. When firearms are used and discharged in the street in a residential area, not only do they cause actual danger to all in the vicinity, including innocent members of the public, but they also create and maintain an atmosphere of fear, intimidation and lawlessness. Conduct such as this is unacceptable in our society and community, and will not be tolerated by the courts. Notwithstanding that you claim to have been using blank ammunition, no one else, victims or innocent onlookers, could possibly have known this. The fear and apprehension caused by the production and discharge is the same, irrespective of the nature of the ammunition.

There are a number of other aspects of real danger that can arise from the use of a firearm in this way. Even on the assumption that blank ammunition cannot cause actual injury, which I doubt, there is always the possibility that a live round has been loaded in error. Further, there is the potential for such conduct to escalate an already dangerous situation and invite retaliation in kind, either by the use of firearms or some other weapon. The fact that none of this occurred on this occasion does not reduce the potential for such consequences. All of these factors explain why the reckless discharge of a firearm in such circumstances is a crime. Sentencing for such crimes must emphasise general deterrence.

There are some further aspects of your conduct on this occasion which increase your personal moral culpability. The firearm itself was shortened. The purpose of shortening an illegal firearm can only be to facilitate its use in respect of criminal conduct. I am not attributing any such intention to you, but possessing such a weapon is a serious matter for that reason. Further, it was clearly being kept by you in your car in a loaded condition. Despite a very direct invitation from me, you have refused to explain your possession of this weapon or why it was in your car loaded with ammunition. You did not hand the weapon over to police after these events, and there is no suggestion that you told them what you had done with it. Your counsel did not explain any of this in the plea in mitigation. After I made comment about this, you instructed your counsel to tell me that you had thrown the weapon into the river. I suppose I have to accept this, because it has not been challenged by the prosecution, but in any event, disposal of the weapon in that manner in order to keep it out of the hands of the authorities, confers no credit on you. I think that your unexplained possession of this loaded weapon in your car, and then your failure to hand it over to authorities after these events, is concerning and demonstrates a complete absence of insight and remorse in respect of your conduct. In my view, these considerations aggravate the objective seriousness of your offending and your moral culpability for it. They increase the need for general deterrence. Those who believe that they can unlawfully possess and use firearms in our community, which have been modified for criminal use and are being carried around in motor vehicles in a loaded condition, must realise that the courts will not tolerate such conduct and that

it will incur heavy punishment. The absence of remorse and insight by you also significantly increases the need for a sentence of personal deterrence.

You are 33 years of age. You have a concerning and lengthy criminal history, although you do not have any prior convictions for firearms offences. However, your criminal history demonstrates a general disrespect of the law over a significant period of time. Further, there are some prior convictions for assaults and breaching family violence orders. On 22 December 2021, you were sentenced to imprisonment for a total of 34 months, backdated to 23 February 2021. This was for numerous offences of various types, which had been committed over a significant period of time. This sentence does not expire until 23 December 2023, but I am told that you became eligible for parole on 29 November 2022. Although the offending for which that sentence was imposed has nothing to do with that for which I am sentencing you today, totality is a relevant consideration. The sentence I impose will be cumulative upon this sentence, and any non-parole period will extend the time at which you will become eligible to apply for parole. I must ensure that the combined sentence is proportionate to the overall criminality and is not unduly crushing in terms of your personal circumstances and prospects.

Other relevant aspects of your personal circumstances are that you are currently in a stable relationship, and you have a young son from a former relationship with whom you were having contact prior to being remanded in custody. You have not seen him since you have been in custody and you have found this difficult. Your counsel claims that you have had the opportunity to reflect on your future while in custody and are committed to rehabilitation. Your pleas of guilty provide some evidence to support this. As I have already noted, your unsatisfactory response to the offending is inconsistent with true insight and remorse at that point, but I can also understand that time in custody can provide the opportunity for appropriate reflection. I will accept that this has occurred, and take it into account. Your counsel has also told me that the complainant has sought and achieved some retribution against you, in particular by the unlawful destruction of your motor vehicle. The Court has no intention of becoming involved in, or tacitly condoning or commenting upon the rights and wrongs of this ridiculous and childish dispute. I regard this factor as completely neutral.

The only possible sentence is a substantial term of imprisonment. I will modify the head sentence in a significant way and permit early release on parole in order to reflect the pleas of guilty and the principles of totality.

Nathan Booth, you are convicted of the crimes and the offences to which you have pleaded guilty. I impose a global sentence of imprisonment for a term of 15 months. That sentence will be served cumulatively upon the sentence which you are currently serving. You are not eligible for parole until you have served eight months of this sentence.