

COMMENTS ON PASSING SENTENCE

JAGO J

Mr Todd, you have pleaded guilty to one count of aggravated burglary and two counts of assault, contrary to s 184 of the *Criminal Code*. One of the complainants was your aunt, the other your cousin. On 28 January 2019, you were at the home of a different aunt, LM. There was a social function. You had a number of alcoholic drinks. Throughout the night you became upset and angry about your mother's passing and some of the issues that had arisen within the family since her passing.

The background to the matter is that tragically, your mother committed suicide in April 2017. You found her and attempted, unsuccessfully, to resuscitate her. It was obviously a traumatic experience for you. Thereafter, you had to deal with your mother's estate. There were a number of disputes that arose in respect to that, involving in part the aunt who you assaulted, JM. Moreover, JM had formed a relationship with the partner of your deceased mother shortly after her passing. That was obviously upsetting to you. It is fair to say a degree of tension existed between you and your aunt, JM. By the early hours of the morning of 29 January, you had become emotional and fixated upon your aunt's behaviour. You left the house and went to JM's home. JM lives there with her daughter, LA. JM was in bed and was awoken by you screaming "I'm gunna fucking kill you, you hurt my Mum". She opened the back door to you. You punched her hard to the face. She fell to the ground and you kicked her to the head and punched her. The complainant lost control of her bowels. She was pleading with you to stop. You responded by making threats to her boyfriend. Eventually, the complainant managed to get up and went to the kitchen. You followed her in there and punched her again. In total, you inflicted five punches and two kicks upon JM. You were not wearing shoes at the time that you kicked her. At this point, her daughter, LA, intervened. You pushed her away. This is the second count of assault. It was a relatively minor push and it caused no injury.

You left the house. As you did so, you continued to yell threats towards the family. You were subsequently located by police not far from the house and taken to hospital because you also had an injury upon your arm.

The complainant was left with very serious injuries. She had bruising around both eyes. Her right eye socket was fractured. She had a two centimetre laceration above the right eye. She had tenderness over the bones of her forehead and a fracture to her left cheek bone. She had bleeding at the lower margin of her left eye and an ulcer on the cornea of the same eye, which impacted her vision. She had bruising to the lips, a loose tooth, and tenderness to the lower jaw bone. She had bruising around the naval and tenderness to the flank. Bleeding within the abdomen was detected. She had a deformity on her left, fifth finger.

Beyond the physical injuries, JM experienced the type of effects which would be expected by such a violent invasion. She remains very anxious and frightened, no longer feels safe in her home but also feels unable to leave her home because of being anxious. LA was not physically injured but nevertheless found the whole situation most upsetting.

Following your arrest, you spent 28 days in custody.

You have a relevant prior criminal history. In 2009, you were convicted of common assault. Also in 2009, you were convicted of resist and assault a police officer. In 2014, you were

convicted of resist a police officer. In 2017, you were convicted of disorderly conduct. Whilst not a prior conviction, it is also noteworthy that in 2021 you were convicted of two counts of common assault committed in July 2019. In respect to that matter, you were sentenced to a 12 month community correction order.

I have been provided with a forensic psychological report, prepared by Dr Michael Jordan. I take the contents of the report into account generally. It is instructive in terms of explaining why this incident may have occurred. After completing your schooling, you moved to the mainland to pursue employment. You returned to Tasmania when your mother's health became poor. Your mother experienced difficulties with mental health and also suffered from Crohn's disease, which was significantly debilitating for her. As noted, you attempted unsuccessfully to resuscitate your mother following her suicide. Since that time, you have experienced difficulties with intrusive phenomena related to your finding of your mother and your attempts to save her. You have ongoing difficulties with insomnia. Finalising your mother's estate following her passing was a difficult process. It was exacerbated by the behaviour of some family members, particularly JM who started the relationship with your mother's partner. It seems on the evening of 28 January, you consumed alcohol, became very emotional and somewhat fixated on JM's behaviour. You have no recollection of walking to JM's property or the incident that occurred there. Dr Jordan is of the view that it is likely you experienced an episode of dissociative amnesia, which can serve as a protective mechanism in times of emotional stress. Dr Jordan is of the opinion that the amnesia is likely to be genuine. Dr Jordan opined in his report *"I form the opinion that Mr Todd was not manufacturing the amnesia but it is certain that he found the period after his mother's death difficult and the fact that his aunt had formed a relationship with his mother's last partner has been emotionally challenging to him"*. Dr Jordan further opined in respect to Verdins considerations *"The closeness of his relationship to his mother, together with the circumstances of her death, which involved Mr Todd unsuccessfully attempting resuscitation, led to not only an extended grieving process but also development of Post-Traumatic Stress Disorder. His processing of his mother's death was then complicated by various circumstances involving the inter-personal dynamics and relationships involving his mother's sister and/or family members. The sum of these events and his mental state were considered relevant to his alleged offending"*. Dr Jordan does not, however, suggest there is a basis for reduction of moral culpability or any reduction in the application of general deterrence principles given the nature and severity of the offending.

It is noteworthy that since the offending, Mr Todd has made efforts to seek treatment and assistance in respect to his difficulties. He has undertaken grief counselling and has sought the assistance of mental health professionals.

I take into account the plea of guilty but note that it was entered at a relatively late stage after there initially being an indication that the matter would proceed to a trial. This necessitated communication with the complainant who was anticipating the need to give evidence. The plea of guilty has only recently been confirmed. Nevertheless, I take into account in the defendant's favour that the complainant was not, in fact, required to give evidence and recount the traumatic events. An important factor in sentencing is the serious injury suffered by JM. The punches and kicks which caused injuries of the nature inflicted, must have been of some considerable force. It is the Court's duty to condemn such violence, particularly when committed inside the sanctity of the complainant's home.

The sentence the Court imposes must deter others from engaging in similar behaviour. I had the defendant assessed as to suitability for a home detention order. Because of instability

associated with his accommodation, he is not considered a suitable candidate. I therefore regard imprisonment as the only appropriate sentence, but I will give you, Mr Todd, an opportunity to avoid having to actually serve any further part of that period of imprisonment, subject to you not re-offending in any serious way. In determining that to be the appropriate sentence, I take into account the fact that you have spent 28 days in custody in respect to these matters.

Christopher Andrew Todd, you are convicted on the Indictment. You are sentenced to nine months' imprisonment. The execution of that period of imprisonment is wholly suspended for a period of two years from today. It is a condition of that order that you not commit another offence punishable by imprisonment. If you breach that condition, then you will be required to serve the period of imprisonment I have just imposed unless that is considered unjust.