

Mr Whelan, a jury has found you guilty of one count of persistent family violence.

Ultimately, the determination of the factual basis of sentence is a matter for me. However, there are a number of necessary implications of the jury's verdict. Firstly, the jury could only have returned a verdict of guilty of this crime if satisfied that, despite its brevity, your relationship with the complainant constituted a significant relationship. This was a matter in issue in the trial. You and the complainant met in December 2019, when you were both receiving treatment in the Spencer clinic. Your relationship commenced in early February 2020, and it ended with your arrest for family violence offences in mid-April of that year. During that short period, you and the complainant became engaged, and you spent most of your time together, apart from two short periods of separation.

It is clear also that the jury accepted that during that period, you perpetrated a course of serious family violence. The violence seems to have had its origin in your unfounded paranoia concerning the complainant's fidelity, combined with your possessiveness and claim to dominance over her. Infidelity will never justify family violence, but just to be clear about the context in which this violence was committed, I am satisfied that there was never any factual basis for your accusations to her, it was simply something that you created in your own mind, and probably reflects deep-seated personal insecurity and other undefined psychological factors. Whatever the reason, you regularly utilised threatening conduct and unrestrained violence to control and punish the complainant. The threatening conduct included the deliberate destruction or damaging of the complainant's property in front of her. The jury clearly accepted the accuracy and honesty of the complainant's testimony, and I also accept that testimony. I am satisfied beyond reasonable doubt that you perpetrated each of the unlawful family violence acts described by her.

There were 13 separate occasions of family violence perpetrated by you during this two month period. The context described by the complainant included ongoing threats and controlling behaviour, but she did not say that there were other acts of physical violence, so I will not assess sentence on that basis. In any event, the particularised acts, occurring within such a brief period, depict a regular course of violent conduct. On three separate occasions, you inflicted violence by punching the complainant to the head more than once. On the first such occasion, you entered the complainant's home in the middle of the night by kicking in the back door, accused her of sleeping with someone else and then punched her in the head three times. On another occasion, after you had punched her to the floor, you pulled her up again by her hair. You also punched her to the head in the middle of the night during a visit to a house in Hobart. A further occasion of family violence involved a sustained attack on the complainant which occurred after you had demanded that she enter and crouch in a fireplace. You were making this demand to degrade, demean and punish her. When you made the demand, you told her that you were "going to break her". When she refused to comply with your demand, you tried to physically push her into the fireplace and while doing so, put your hands around her throat and choked her until she became unconscious. When she regained consciousness a short time later, you punched her in the groin at least three times and then started to choke her again. Once again, you did this until she passed out. On another occasion, you dragged her by the hair along a floor through broken glass. She suffered a cut on her hand as a result of this assault. There were further assaults, one of which involved you swinging an axe at the complainant while she was driving and another in which

you struck her to various parts of the body several times over a protracted period with items such as a hammer, a guitar and a guitar stand. In addition, there were three separate occasions when you deliberately and vindictively destroyed the complainant's property in front of her. This included her mobile telephone, laptop, iPad and her guitar.

The crime also included offences committed on two other occasions. The first occurred after you and the complainant had been woken by another couple arguing in the house in which you were staying. You started to accuse the complainant of sleeping with other men in the house and she decided to leave. You attempted to physically stop her from leaving the bedroom. You shut the bedroom door and stood in front of her. The room was then in darkness. It is clear that you had, before taking this action, picked up a samurai sword that you had placed in the room at an earlier time. The blade was out of its sheath, although it is not clear when it was removed. In the course of resisting the complainant's attempt to leave the room, you placed the blade of the sword against her arm with sufficient movement and/or force to cause a significant wound. Clearly, the blade was very sharp. The prosecution did not assert that you intended to cause this wound but did assert that you were subjectively reckless in relation to such an outcome, and this was the basis on which this family violence act was left to the jury. Your counsel submits that the evidence does not justify a finding that you actually foresaw that your actions might result in a wound to the complainant, and hence I should not sentence you on the basis of this act. I reject that submission. There was evidence that although this sword belonged to another person, you were familiar with it, and you had clearly taken temporary possession of it. Your conduct in taking up the sword, which was either already unsheathed or which you then removed from its sheath, and then using the naked blade to apply force to the complainant, all of which occurred in the context of you trying to force her to remain in the room against her will, can only be consistent with you subjectively foreseeing that your actions might wound her. The biological examiner's evidence suggested that the pattern of blood found on the blade of the sword was consistent with a cutting motion. I am satisfied that you recklessly use this weapon in an attempt to control and intimidate the complainant and, in doing so, you caused a significant injury to her arm. She was complicit with you in not wanting this conduct to come to the attention of the authorities and, accordingly, the wound was treated by you and her with first-aid. Fortunately, it seems to have healed without ongoing consequence, although she does now have a scar in that location.

The final occasion of family violence involved your commission of the offence of emotional abuse and intimidation. This occasion involved a sustained period during which you effectively treated the complainant as a prisoner and made a number of threatening gestures and comments. The intimidation including wrapping a chain around your knuckles and telling her that you could crack a skull with it. It was during the commission of this offence that she managed to get a message to her landlord seeking help. The police were called and you were subsequently arrested.

The complainant has chosen not to provide an impact statement. Notwithstanding this, I am satisfied that she has been and remains in fear of you. I accept her evidence that on more than one occasion, you threatened long-term retaliation if she made a complaint to police. Her fear of you and her consequent reluctance to take any sort of action against you is obvious from her conversations with investigating police at and shortly after your arrest. Your threats of retaliation were confirmed from your own mouth when you repeated them to your mother in a conversation you had with her after your arrest in April 2020. The complainant's ongoing fear of you demonstrates the significant impact of your conduct on her. She was vulnerable at the time

because of circumstances in her life which had led to the need for a short-term admission to the Spencer clinic. You were well aware of this. I have no doubt that this impact will continue well into the future, if not permanently.

You are 43 years of age. You have a significant criminal history, which is consistent with your long-term problems with alcohol and illicit drug use. Although your history includes some offences involving violence, there is no prior history of family violence. Your counsel tells me that despite your problems of substance use, you have a reasonable industrial record.

As I have already noted, although this relationship did not continue for very long, it did involve a sustained course of serious violence. The acts of strangulation to the point of unconsciousness, use of weapons and attacks to the head are particularly serious forms of violence, which in fact, caused significant injury and suffering, and could easily have had far worse consequences. The overall pattern of coercing obedience by the threat and actual use of violence is also of significant concern. Family violence of any type is unacceptable, but at this level, the Court has an obligation to respond with a sentence which unequivocally asserts the complete rejection and denunciation of such conduct, and will deter others from offending in a similar way. The only possible sentence is a significant term of imprisonment.

There is nothing that can be said on your behalf in mitigation. You are not entitled to the benefit of a plea of guilty nor have you demonstrated any remorse or insight. Your criminal history reflects an ongoing lack of respect for the law, and a propensity to engage in violence in breach of the law. Notwithstanding your lack of criminal history involving family violence, my judgment is that personal deterrence is a relevant sentencing consideration in this case.

Nathan Whelan, you are convicted of the crime of which you have been found guilty and sentenced to imprisonment for a term of seven years. The commencement date of the sentence will be backdated to 8 June 2022, in order to reflect the time that you have already spent in custody. You will not be eligible for parole until you have served four years of this sentence.

Pursuant to s 13A of the *Family Violence Act*, I direct that this crime be recorded on your criminal record as a family violence offence.

Pursuant to section 36 of the said Act, I have power to make an order under the Act if satisfied of the matters set out in s 16(1). Clearly, I am satisfied of those matters. A final family violence order was made by the Magistrates Court on 25 January 2023, and this order is in force for 12 months from that date. Section 20 of the Act provides for the possibility of variation of an order if the Court is satisfied that there is been a substantial change in circumstances since the order was made. The finding of guilt on this serious family violence crime, in my view, amounts to a substantial change in circumstances. Having regard to my findings concerning the seriousness of the family violence perpetrated by you, your threats of long term retaliation, and the fear of you reasonably held by the complainant, it is appropriate in my view to ensure that the protection of this order continues for an indefinite time. Accordingly, I vary the said order by removing the 12 month life of the order, and instead providing that it remain in force unless and until it is varied or revoked by a court of competent jurisdiction. Given that you are present in court listening to this, that variation will take effect immediately.

I make an order in favour of the complainant for compensation in respect of the property which was damaged according to the evidence which she gave in a sum to be assessed and I adjourn the assessment of that sum sine die.