

STATE OF TASMANIA v JUSTIN ROBERT DARE
COMMENTS ON PASSING SENTENCE

24 JULY 2023
JAGO J

Mr Dare, you have pleaded guilty to one count of criminal code assault. I am also dealing with an associated summary matter of trespass. On 12 October 2020, you entered through the unlocked front door of the complainant's unit. You did not have permission to enter. This amounts to the charge of trespassing. You proceeded to assault the complainant by punching him to the face whilst wearing a pair of knuckle dusters. The incident arose following a dispute between your partner and the complainant over care arrangements for a child. The complainant is the father of your partner's two children. One of those children was spending time with him over the weekend of 10 – 12 October. Plans had been negotiated for the child to be returned to your partner's care for a birthday dinner on 11 October. The complainant declined to return the child and this caused great upset for your partner. On 11 October, so the day before the assault, you had attended at the complainant's brother's residence and endeavoured to discuss the issue. That did not go particularly well. You were told to leave and as you did so, you said something like you "would bury" the complainant. On the morning of 12 October, the complainant was at home with his new partner. She was in the lounge room nursing their 11 month old daughter. Another child was also in the lounge room and the child in question was asleep in a bedroom. The fact the assault occurred with these people, including very young children, in the residence is aggravating, in my view. Upon entering the residence you demanded the return of the child. When your demand was refused, you punched the complainant to the face, as I have described. The complainant then picked up a baseball bat, swung it at you and insisted you leave. You eventually did so.

The complainant suffered a two centimetre laceration and swelling to his lower lip. The wound was closed with two stitches. The wound healed well but he has been left with a scar.

Later that day police spoke with you. Initially you denied any knowledge of the incident, but upon being confronted with messages on your partner's phone, which were indicative of the incident occurring, you became co-operative. You directed police to the knuckle dusters. You participated in a record of interview. You told police that your partner had become hysterically upset because of the child not being returned for the birthday celebrations. You told police that you had spoken to both lawyers and police in order to obtain some assistance, but without success. You had endeavoured to speak to the complainant on the 11th to secure the return of the child but again, this was without success. You said, essentially, that it was seeing your partner so upset that led you to act as you did. You admitted to police that it was the wrong thing to do, particularly given it had occurred in front of the children.

The complainant has been adversely affected by this incident. He has been left with a scar and initially the injury was quite painful. The complainant's partner who, as I have noted was present at the residence at the time, has also been left feeling unsafe and anxious following the incident. The children were upset as a consequence of the incident.

You are now 37 years of age. You remain in a relationship with Ms Lee. She has three children, all of whom you treat as your own. You are employed with Agronico and have been since March of 2021. It seems this employment has been of significant value to you. I have regard to the reference with which I have been provided from your employer. You are obviously well regarded in your position of employment. Importantly, your employer comments on the very positive improvements he has observed you make to your life over the past two years.

You have, undoubtedly, a substantial and relevant criminal history. Your criminal offending commenced when you were a youth and has continued fairly persistently up until the end of 2020. You have prior convictions for matters of dishonesty, driving offences, bail offences, offences against police, trespass and matters of violence. Particularly, you have four prior convictions for trespass and seven prior convictions for common assault. Many of these were committed in a family violence context. You have been sentenced to periods of imprisonment in the past and you have also received the benefit of suspended periods of imprisonment, many of which you have subsequently breached.

In July 2021, you were sentenced to a period of wholly suspended imprisonment for various driving offences, offences contrary to the *Misuse of Drugs Act* and destroy property. That period of suspended imprisonment expired without breach. On my reading of your record of prior convictions, it is the first period of suspended imprisonment with which you have successfully complied. That is consistent with the submissions that were put on your behalf, namely that since the commission of this crime, and your employment with Agronico, you have been making a very concerted effort to turn things around.

In the lead up to this incident you were a regular user of illicit substances, and also frequently consumed alcohol to excess. You have addressed both of those issues. You have now not used illicit substances for a period of nearly three years. You attribute your success in abstaining from drug use to your employment. Your consumption of alcohol has also markedly reduced.

I had you assessed as to your suitability for a home detention order. Because there is a prior history of family violence between you and Ms Lee, as a matter of policy, community corrections will not approve a residence for home detention if there has previously been a family violence incident recorded between co-residents. Of course, both you and Ms Lee live at the proposed address. Despite this limitation, in my view the home detention report is positive. It indicates you have insight into the wrongfulness of your offending and recognise the potentially negative effect witnessing the incident had upon the children. You also recognise that resolving issues about the care of children in this manner is most unacceptable. There is now a formal custody agreement in place between your partner and the complainant, and there is no longer any need for communication between you and the complainant.

There is no question that this was a serious assault. You caused injury to the complainant. The motivation for your violence was your belief a custody agreement had not been complied with. Resort to violence to sort such issues out simply must be condemned by the courts. General deterrence is an important sentencing consideration. I am also satisfied, however, that it is appropriate to give weight to rehabilitation in this sentencing exercise. The fact that you have stayed out of trouble since the end of 2020, measured against the background of your prior convictions is significant. You have also obtained employment and you are doing well in your position. You are now abstinent from illicit substances. All of these factors indicate you have solid prospects for reform.

I am satisfied a period of imprisonment is warranted to mark the seriousness of the offence and to recognise the harm you caused to the complainant but given the steps towards rehabilitation that you have clearly undertaken in the more recent past, that period of imprisonment should be suspended to encourage you to continue on that pathway. I will also be requiring you, however, to undertake community service work.

You are convicted of the crime and the offence. I impose a single sentence. You are sentenced to 14 months' imprisonment. That period of imprisonment will be wholly suspended on condition you commit no offence punishable by imprisonment for a period of two years. Additionally, as a condition of the suspended sentence, you must complete 98 hours of community service. You have two years in which to complete those hours. You must comply with the reasonable directions of a probation officer, or supervisor. You must report to community corrections, Devonport, by the close of business tomorrow. You must comply with all reasonable directions given to you by a Community Corrections' supervisor or probation officer.

I make a compensation order in favour of Quade Belcher in an amount to be assessed.

I order the forfeiture of the knuckle dusters to the State and note the asserted value of \$10.00.