

STATE OF TASMANIA v SHAUN FRANCIS BURGESS
COMMENTS ON PASSING SENTENCE

2 OCTOBER 2023
JAGO J

Mr Burgess, you have pleaded guilty to one count of persistent family violence. You and the complainant commenced a relationship in December 2020. You lived in various parts of Australia before relocating to Tasmania in February 2022. Thereafter, you and the complainant lived together in a number of places in the Circular Head area. Between February 2022 and November 2022 you perpetrated a number of acts of violence upon the complainant. Eight specific occasions are relied upon as constituting the crime.

In April 2022, you were living at Roger River. You grabbed the complainant by her hair and dragged her into the house, through the kitchen and along the hallway into a bedroom. You stood over her and punched her to the head and face numerous times. The second occasion occurred in late April, early May 2022. The two of you began arguing whilst in a bedroom. You were yelling at the complainant. You got on top of her, pinned her to the bed and punched her to the head several times. Because she was pinned down she was unable to defend herself. Shortly thereafter, the third occasion occurred. You and the complainant were arguing. You pushed her hard against a wall, causing her to fall to the ground. You then picked her up and threw her before grabbing her by her breasts and, again, pushing her firmly against a wall. The fourth occasion occurred around the same time. On this occasion, the complainant was sitting on a chair on a deck. You kicked the chair out from under her, causing her to land on her back on the deck. You then punched her to the head and body on several occasions.

Between May and September 2022, there was a fifth occasion which occurred at a caravan park in Smithton. You punched the complainant to the head. In October 2022, the sixth occasion occurred. You and the complainant were living in Lialeeta Crescent. You punched the complainant to her face and broke her glasses. When she fell to the floor, you endeavoured to kick her but her dog prevented you from doing so. The seventh occasion also occurred when you were living in Lialeeta Crescent. On this occasion, you and the complainant were arguing in the bedroom and you slapped her to the face.

The eighth occasion of violence was perhaps the worst. On 15 November 2022, the complainant told you she wanted to end the relationship. After telling you this, she went to her mother's home for a period before returning. When she returned, you were angry. You grabbed her and forcefully kissed her. Around 1:00am the next morning, you approached the complainant whilst she was sitting at a table. You were still angry. You began to verbally abuse her. You then picked up a chair and walked into the lounge room, indicating you were going to throw it through a window. The complainant yelled at you to stop. You then walked into the kitchen area. The complainant was standing by the fridge. You lent down and put your arms around the complainant's hips. You picked her up, walked her towards the kitchen bench and then forcefully threw her onto the bench. Her back hit the edge of the bench hard, causing her immediate and extreme pain. She fell to the ground. She was unable to breathe and felt shocked and lightheaded. Whilst she was disabled on the ground, you lent over her, held a filleting knife with its blade pointing towards her, and told her that you were going to kill her.

The complainant was badly injured and in considerable pain. She asked you to call an ambulance. You refused to do so. The complainant began to drag herself towards the front door. She could not walk. You picked her up and put her on a couch. Eventually, she was able to get to her feet and leave the unit. You did not attempt to stop her. She went to her mother's home where she located her son and an ambulance was called. The complainant was

taken to hospital. She had a large traumatic haematoma on her right side buttock, which was evacuated under surgery. The injury was painful and the complainant was prescribed pain relief. Police were notified. You were subsequently arrested and have been in custody since 16 November 2022.

The complainant has been badly affected by your violence. The last incident, in particular, caused her considerable pain, but she has been traumatised by your treatment of her throughout this whole period. She has experienced psychological and emotional difficulties, including disturbed sleep and nightmares. She often feels panicked and anxious.

You are 34 years of age. You have no prior convictions in this State. You have prior convictions in South Australia for an assault against police, but otherwise do not have a prior history of violence. You have had a difficult upbringing. Your father was a violent, but also highly religious man. He would regularly assault you. You were diagnosed with ADHD as a child, but your father refused treatment, claiming "God would heal you". You left home at the age of 14 and essentially lived on the streets. It was there you developed a significant substance abuse issue. You have grappled with drug addiction for the past 20 years. You have also experienced a number of related difficulties with your mental health. I am told that much of this violence occurred when you were endeavouring to cease methylamphetamine use without any appropriate supports or guidance in place. You did not cope well with that and became prone to angry and violent outbursts.

It is to your credit that you entered an early plea of guilty to the charge. You appeared before this Court unrepresented. I obtained a pre-sentence report in respect to you. I have regard to the contents of that report generally. In particular, I note the remorse you expressed to the author of the report. It does appear as though you have some insight into the seriousness of your behaviours and the impact they have had upon the complainant. Since being remanded in custody, you have remained free from illicit substances. You accept that ultimately your rehabilitation is dependent upon you continuing to do so. You have engaged in some courses that are available to you, and hope to engage in further courses to assist you with your drug and anger issues as they become available to you.

As noted, your plea of guilty counts in your favour. It evidences an acceptance of your wrongdoing and, importantly, has saved the complainant the ordeal of having to prepare for, or attend at, a trial. Your crime, when considered as a whole, involved a course of conduct which was degrading, intimidating and dangerous. On a number of occasions, you struck her hard to the head area. The risk associated with that is obvious. The complainant suffered not only physical injury, but also indignity and anxiety, and because your behaviour went on for a number of months, a pattern of emotional and physical cruelty was reinforced. This exacerbated the impact of your crime upon the complainant. It was a terrifying, painful and demeaning experience for her.

Family violence has no place within our community. General deterrence and denunciation of your conduct are primary sentencing considerations. In my view, a significant sentence of imprisonment must be imposed.

Mr Burgess, you are convicted of the crime of persistent family violence and sentenced to a period of two years and eight months' imprisonment. The sentence would have been longer but for your plea of guilty. The sentence will be backdated to commence on 16 November 2022. In recognition of the fact that you do not have a poor history of violent offending, I will

allow for your release on parole at the earliest opportunity. I order that you are not eligible for parole until you have served one half of the sentence. Pursuant to s 13A of the *Family Violence Act*, I direct that the crime be recorded on your criminal record as a family violence offence.