

Mr Cornwall, you have pleaded guilty to one count of unlawfully injuring property, one count of aggravated assault and one count of aggravated burglary. On 30 April 2022, you went to the residence of the complainant. You observed him reversing his 2016 Mustang into his garage. You entered the garage uninvited. You had with you a BB gun, which was in the form of a pistol. You pointed the barrel of the BB gun towards the complainant and said, "I know about you and [name redacted]. She has told me everything." This was a reference to you having learnt from your wife that she had been having an affair with the complainant. The complainant denied the affair. You became angry. You grabbed hold of the door of the Mustang and slammed it into the garage wall. This caused damage to the plaster within the garage. You slammed the car door shut. You again pointed the BB gun at the complainant and said, "I'll shoot you. Get your knees on the ground." The complainant declined to follow your demands. You kicked the side of the Mustang. You were yelling at the complainant and continued to point the gun at him. You motioned with your hands as if to rack the pistol, no doubt wanting the complainant to believe he was in danger of being shot. Frustrated and angry, you opened the car door again, swung it into the garage wall and then kicked the side of the car and the driver's side rear view mirror. The mirror was damaged. You also struck the bonnet of the car with your heel. You again confronted the complainant about the affair. The complainant argued with you. You reiterated your demand for him to get on to the ground. You continued to point the BB gun in his direction. At one point you said, "I have a high powered rifle. See that seat up there, I can shoot you from there." This was a reference to shooting the complainant from a geographical location approximately 300 metres away. It was clearly intended as a further threat.

Shortly after this, you left. You contacted your wife and told her that you had confronted the complainant. What you said to your wife was a statement reflective of satisfaction rather than remorse. After the incident you burnt the BB gun, later telling police you did so, so there would be no evidence. The complainant reported the matter to police. A forensic examination occurred. On 2 May 2022, you were spoken to by police. You made admissions. You told police that you had become aware of the affair between your wife and the complainant, that you felt the complainant was driving his Mustang around the town in which you both lived, in a "gloating" fashion. The car apparently caused you particular upset because it was associated with the affair. You told police that you and your wife were trying to reconcile and that you considered confronting the complainant was necessary for you to obtain some form of closure. You told police that you had purchased the BB gun on line a number of years earlier. You agreed it had the appearance of a semi-automatic pistol. You said it had capacity to shoot pellets, but it was not loaded on the day. You agreed you pointed the BB gun at the complainant and threatened to shoot him. You agreed you wanted to scare the complainant in an endeavour to encourage him to move away from the area. You agreed the BB gun looked like a real firearm and the complainant would have believed it was a real firearm. You told police you kept a distance from the complainant so that he did not come to appreciate that it was not a real firearm. You told police that upon reflection you realised you had "stepped over the mark" and wanted to apologise to the complainant.

The complainant declined to provide a formal victim impact statement. He provided a letter to the Court, to which I have had regard. He provided additional information to prosecution. This information clearly indicates he found the incident most unsettling and had experienced periods of anxiousness, hyper vigilance and loss of sleep following the incident.

Of course, it is a relevant factor that the BB gun was not capable of propelling a projectile by means of an explosive. It could fire a pellet, although you told police that it was not loaded at the time and there is no reason to not accept that. I will sentence on the basis the BB gun did not have capacity to cause actual physical harm to the complainant but, as noted, this was undoubtedly an unsettling and distressing experience for him. The complainant did not know that it was not a real firearm. Indeed, you wanted him to believe that it was and took a number of steps to encourage him to hold such a belief.

It counts in your favour that you have pleaded guilty to these charges at an early stage. The matter was never prepared for trial. You have one relevant but dated prior conviction. In 1997 in Queensland you were convicted and fined for being in possession of a weapon whilst not the holder of an appropriate licence. You have some other prior convictions for dishonesty matters in Queensland as a young man, but since your relocation to Tasmania in 2000, there are only traffic infringement matters on your record.

You are 44 years of age. You have a solid industrial record, having successfully commenced and operated a number of businesses. It seems the catalyst for this out of character behaviour was the discovery of your wife's affair with the complainant. You and your wife had been married for 20 years and this discovery caused you significant upset. When the incident occurred, you and your wife were endeavouring to reconcile. You felt the complainant was somehow taunting you and that in order to move on, you needed to confront him. Doing it in the manner that you did was obviously a very poor exercise of judgment.

Whilst I accept the overall period of offending was brief, it cannot be described as spontaneous. You travelled to the complainant's home. You took with you the BB gun. You had time to reflect upon the foolishness of your intentions. Such, however, was your angst that you confronted the complainant in the manner I have described and took steps to ensure he would believe you were in possession of a real firearm. Your intention was to scare him. I accept that you now recognise that your behaviour was foolish and you are ashamed and embarrassed by your behaviour.

In formulating sentence, I take into account the seriousness of the offending. Given your lack of prior convictions and the salutary experience of being charged and brought before the Court, personal deterrence is not, to my mind, a matter of great significance in the sentencing exercise. But any level of threat by firearm is to be condemned, including using an object which imitates a real firearm, to effect such threat. It is necessary to pass a sentence which reflects the community's expectations that firearms be treated as dangerous items and not used as a means of settling grievances, real or perceived. There is a need, in my view, to impose a period of imprisonment to mark the seriousness of the behaviour and to deter others from offending in this way. However, because of your generally good character, your lack of prior convictions, your early plea of guilty and your genuine remorse, that period of imprisonment can appropriately be suspended.

Derek Charles Cornwall, you are convicted of all matters to which you have pleaded guilty. You are sentenced to a period of five months' imprisonment. The whole of that period of imprisonment will be suspended for a period of 18 months on condition that you are not to commit a crime punishable by imprisonment during that period.

I make a compensation order in favour of Suncorp Metway Limited, the terms of which will be adjourned sine die. I make a compensation order in favour of the named complainant, the terms of which will be adjourned sine die.