

Codie Ken Fazackerley has pleaded guilty to one count of wounding. On 9 May 2022 the defendant and the complainant, Sahr Lahai were both present at the City Mission Safe Day Space in Barrack Street, Hobart. This is a service open during the day and provides facilities and amenities for people experiencing homelessness .

The defendant became agitated because the complainant was in the toilet cubicle. The defendant tried to enter the toilet cubicle and told the complainant to hurry up. As the complainant was leaving the cubicle, the complainant instigated a fight with the defendant which continued out into the kitchen area. Staff intervened and separated the two and the complainant walked away from the defendant towards the living area.

Immediately after the fight, and at a time when the complainant had walked away and was not a threat, the defendant picked up a knife from the kitchen area and followed the complainant. Staff told the defendant repeatedly to put the knife down. The defendant ignored staff. One staff member stood between the defendant and the complainant and told the defendant to settle down. The defendant told the staff member to "get out of his fucking way". The staff member activated the duress alarm, notifying police.

The defendant walked towards the complainant with the knife in his hand. The complainant put his hands up in front of his face and told the defendant to stay away from him. The defendant continued towards the complainant who had partially turned away from the defendant. The defendant kicked the complainant to the back of the knee, causing him to fall to the ground.

The defendant then struck the complainant to the head with the knife multiple times in a downward motion. The complainant wrestled with the defendant in an attempt to stop the attack. A third person became involved, taking the defendant's side, and assisted the defendant by keeping the complainant on the ground during the assault. Throughout the assault the complainant was holding his hands up to try and protect his head.

Meanwhile staff members and others who were present shouted at the defendant to stop the attack and to put the knife down. A staff member grabbed the knife, causing the handle to come away from the blade. The defendant stopped his attack and immediately left the premises in the company of the person who had become involved and restrained the complainant.

During the course of the attack the defendant struck the complainant approximately ten times with the hand that was holding the knife and on some of those occasions the knife struck the complainant and the complainant sustained at least two knife wounds.

The complainant sustained a number of injuries the most serious of which was a 3-4 cm wound to the left side of his scalp which was described as gushing with blood on his arrival at hospital. The complainant also sustained a 2 cm laceration to the back of his neck, multiple deep grazes to his inner lower lip and two superficial cuts under his left eye.

The complainant was admitted to hospital for treatment. The wound to the complainant's head required 6 staples, the wound to his neck was glued and steri-strips were applied.

Fortunately, there is no suggestion that the complainant has suffered any lasting injury.

The defendant was arrested later that day. He participated in a record of interview in which he commented on CCTV footage of the incident that was shown to him. He admitted he was involved but did not admit using a knife saying he could have had something in his hand but it could have been "anything".

The defendant intentionally struck the complainant with the knife repeatedly and with an intention to wound. I accept that the defendant did not intend to stab the complainant so as to cause a deep penetrating wound or to cause substantial injury.

Still, his intention to wound is a serious aspect of the case. It is to be contrasted with less culpable cases which involve the infliction of a wound with a state of mind of subjective recklessness, meaning the person was aware a wound might result but did not intend that result.

Also, as a matter of common sense, once a knife is brought to a physical conflict, a dynamic situation, the potential is there for an injury that could well be lethal or very serious regardless of what was intended in terms of force, especially if there are multiple blows with a knife in hand and if they are inflicted to the head and neck region.

I take into account the circumstances of the offending. Immediately beforehand the defendant had been involved in a physical altercation and during that altercation with the complainant he had been injured. His violence was driven by anger and a spontaneous response to that heightened situation.

I note too, that at the time, he was subject to personal pressures following the breakdown of a relationship and he had relapsed in terms of methamphetamine use and alcohol consumption.

The defendant is now aged 32 years. He has an extensive criminal history for dishonesty, violence, alcohol and drug related offences and anti-social behaviour.

As an adult he has four notable convictions for violence. In 2011 he was sentenced to a five month term of suspended imprisonment for assault and injure property. The assault involved demanding money from his brother and threatening him with a knife. On 15 April 2015, he was sentenced for aggravated armed robbery and an assault, these crimes were carried out with others and involved the use of a handgun. The sentence was 18 months' imprisonment. Soon after he was released he reoffended giving rise to two counts of assault for which he was sentenced in February 2019 to a term of 688 days' imprisonment, which was time served. In October of that year he committed a robbery and was sentenced in November 2020 to a term of imprisonment of one year and nine months backdated to 7 November 2019.

He was on parole at the time he committed the crime of wounding for terms of imprisonment imposed in December 2020 in the Magistrates Court for driving offences including motor vehicle stealing, evading police, reckless driving, and as a result of being re-sentenced for breaching sentences previously imposed. His parole was revoked and he has been in custody since the 9 May 2022. He has served that sentence which concluded on 26 September 2022. Since then his remand in custody is attributable to this crime of wounding.

The defendant's upbringing was characterised by exposure to violence and substance and alcohol abuse, leading to welfare intervention and placements in foster care. He developed a problem with abuse of drugs and alcohol in his teenage years which has persisted since then. As a consequence of disadvantage and difficulties in learning, due to Attention Deficit Hyperactivity Disorder he disengaged from education when he was in grade six.

A recent NDIS application identified that the defendant experiences Specific Learning Disorder but was deemed ineligible for support because there were no attempted interventions when he was a youth. This ineligibility criterion has not been explained and at face value would seem to be one which entrenches disadvantage.

He was sentenced to detention as a youth and I am told that due to his experience in detention he is pursuing a claim under the National Redress Scheme.

Mr Fazackerley has demonstrated a capacity for hard work and has taken up opportunities that have been provided to him for paid and volunteer work through the Tasmanian Aboriginal Centre. His prospects of reform depend on his ability to address his addictions to alcohol and drugs and underlying factors which place him at risk of relapse and reoffending. His level of addiction and the proportion of time he has spent incarcerated as an adult means that he has difficulty coping in the community and managing pressures to return to criminality.

In July 2020 a drug treatment order was made however, he reoffended soon afterwards. I note the defendant has indicated that he considers he would benefit from a residential rehabilitation program on his release. Pearce J commented when sentencing the defendant in November 2020, that enrolment in a full time residential program was crucial to his reform.

Mr Fazackerley's background of significant disadvantage and the culture of substance abuse in which he grew up remains relevant to the sentencing task. In order to reform he will have to overcome multiple disadvantages and difficulties. If there are realistic prospects of reform and indications that the defendant demonstrates a commitment to making the efforts required, the Court would place significant value on those prospects and positive indications. His rehabilitation remains an important sentencing goal.

There are, in fact, a number of current positive indications about his prospects of reform. He is gaining assistance so that he may be eligible for housing in the future. In the last 12 months within the prison environment, significant improvement has been noted in terms of his participation in work and overall engagement with staff. It is said that the defendant has been genuinely trying to make changes in his behaviour and is keen to ensure that he is well placed on his release to manage in the community and to prevent his return to prison. The opinion is expressed that while on his last release he did not succeed on parole and reoffended, "having the support of Community Corrections was very beneficial and [he] was more successful in the community than he previously had been."

There are other positive indications. Mr Fazackerley is an Aboriginal man with strong links to the Tasmanian Aboriginal Centre and on his release he will be offered comprehensive support and a range of programs by the Centre. He is also to be offered drug and alcohol rehabilitation through the Aboriginal Health Service. A co-ordinated and individualised program called Narakupa Nina-tu will be offered to the defendant as well as regular appointments with a drug and alcohol worker, and General Practitioner Dr Samuel Maloney. Dr Maloney has provided a report to the Court confirming that the defendant will be offered these appointments and support and rehabilitation and also psychological treatment to address mental health issues. The Service is mindful that inpatient or outpatient drug rehabilitation programs may be appropriate and if so, that can be co-ordinated with the approval of Community Corrections.

Community Corrections is aware of the treatment and support that is offered by the Aboriginal Health Service and the Tasmanian Aboriginal Centre to Mr Fazackerley, and will liaise with

the Tasmanian Aboriginal Centre to coordinate appointments and also will be able to direct the defendant to engage with treatment with the Aboriginal Health Service if an order is made that the defendant comply with the reasonable and lawful directions of a probation officer.

I conclude that there are very encouraging signs of reform and that there are strong and comprehensive supports that will be in place for the defendant on his release from prison.

I take into account that he has pleaded guilty to the current charge at an early stage.

A heavy sentence is required, the defendant committed a serious crime of violence inflicted upon a man after knocking him to the ground. It was a determined attack involving multiple blows to the head and neck area with a knife in his hand, resulting in two significant wounds. One of them was serious but there was significant potential for an even more serious, if not lethal, injury to result. The Court must denounce this conduct and send a strong message to the defendant and others that this kind of violence will not be tolerated.

I am mindful of the time spent in custody serving a sentence from May 2022 and the need to ensure that the sentence I impose today together with that earlier sentence of imprisonment are just and proportionate to the totality of Mr Fazackerley's offending.

For the reasons I have given, the sentence is formulated so that there is an incentive for Mr Fazackerley to continue with his reform. There will be an opportunity for parole and a small part of the sentence will be suspended to facilitate his rehabilitation and to reflect the fact that the Court is satisfied that Mr Fazackerley is someone who is genuinely motivated to achieve his reform.

I record a conviction and I impose a sentence of two years and five months' imprisonment backdated to 26 September 2022. I suspend four months of that period. The defendant is eligible to apply for parole once he has served 13 months of that sentence.

The four months imprisonment which is suspended is subject to the following conditions that the defendant:

- must not commit an offence punishable by imprisonment for a period of two years from the date of your release;
- must submit to the supervision of a probation officer as required by the probation officer for the same period of two years from the date of your release;
- must report to a probation officer at Community Corrections 75 Liverpool Street, Hobart within 2 working days of your release from prison.
- must comply with the reasonable and lawful directions of a probation officer or supervisor;
- must not leave or remain outside Tasmania without the permission of a probation officer;
- must give notice to a probation officer of any change of address or employment before, or within 2 working days after, the change;
- must undergo assessment and treatment for drug dependency as directed by a probation officer;
- must comply with directions regarding attending and completing counselling and programs for drug rehabilitation including a residential rehabilitation program;
- must undergo assessment and treatment for alcohol dependency as directed by a probation officer.

- must submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.