

Mr Johnson, a jury found you guilty of one count of Criminal Code assault. You were found not guilty of two other charges on the indictment, namely aggravated burglary and assault. The determination of the factual basis of sentence is a matter for me. I may only make findings adverse to you if satisfied beyond reasonable doubt they have been proved and I may only make findings of fact in your favour if they are proved on the balance of probabilities. Essentially, for the jury to convict you on the crime of assault they must have accepted in all essential respects the evidence of Wayne Hicks. With one exception that I shall mention shortly, I considered the evidence of Mr Hicks to be credible and I will sentence on that basis that the assault occurred essentially as he described.

On 12 January 2020 you were standing on a footpath outside Mr Hicks' residence engaged in an argument with your partner. You had earlier attended at your mother's residence which is over the road from the Hick's residence. The argument could be heard from within the Hicks' residence. Mrs Hicks left the residence and went outside. She enquired as to whether there was a need to call police. I am satisfied you responded to her in an aggressive manner, although I am unable to find with certainty what words you uttered. Mrs Hicks retreated to the front porch area of her residence. You approached the front porch. Mr Hicks came outside and stood between his wife and you. I am satisfied Mr Hicks was not armed with anything. At that point Mr Hicks told his wife to call the police. I am satisfied you then reacted by grabbing hold of Mr Hicks and placing him in a headlock. You dragged him backwards and began punching him around the head and face area. Because you had Mr Hicks in a headlock, he was unable to defend himself. Mr Hicks estimated that he was hit approximately 20 times. I do not consider that Mr Hicks, given the position he was in, would have any capacity to know with any degree of certainty how many blows were struck, although I accept it may have felt to him as though he was being constantly hit. At one point Mr Hicks was propelled into the wall of the house. I am not satisfied you did this deliberately but it was, of course, a direct consequence of your assault upon him. I will sentence on the basis that you struck Mr Hicks to the head, body and face on a number of occasions, whilst you held him in a headlock and he was completely vulnerable, and that the injuries he ultimately suffered were all a consequence of your violence.

At some point your brother intervened and tried to drag you away from Mr Hicks. Simultaneously Mrs Hicks grabbed an axe handle that was inside the front door of her residence and used it to try and free her husband from you. In doing so, she accidentally struck your brother to the forehead area. This seemed to bring the matter to an end. Your brother pulled you away from the front steps. As you left the area, you picked up some rocks from a garden bed and threw them at a front window. The window smashed. You have pleaded guilty to an offence of destroy property. I will deal with that, and another offence of breach of bail for being within 50 m of your mother's residence, pursuant to s 385A of the *Criminal Code*.

I am satisfied that none of the blows you inflicted were delivered with any honestly held belief that you needed to defend yourself. Rather, I am satisfied that you delivered the blows because you were in a heightened emotional state following the argument with your partner, intoxicated and slighted by Mrs Hicks' intervention in the matter. Quite clearly, you should have controlled your temper and walked away. Your assault upon Mr Hicks was completely unjustified and unwarranted.

Mr Hicks was subsequently taken to the North West Regional Hospital. He was observed to have swelling to the right side of his face, a significant bruise around the right eye and a sub-conjunctival haemorrhage on the outer surface of the right eye. There was a fracture of the right cheek bone that extended to the floor of the eye socket. There was also a graze and bruising on the outer aspect of his left forearm, and pain to his neck and upper spine area. Mr Hicks' injuries did not require surgical intervention but the bruises and general soreness took quite a while to settle.

Mr Hicks was badly affected by your violence. He considers pre-existing injuries from a motor vehicle accident have been exacerbated by this incident. He continues to experience feelings of fear and apprehension. He found the experience of having to give evidence in Court most difficult. He continues to feel unsafe in his own home and has installed security cameras and now keeps dogs for his protection.

You are 27 years of age. You have a poor history of violent offending. In May 2016 you were sentenced by this Court to one count of assault police and offences of destroy property, common assault, breaching a Police Family Violence Order and resisting a police officer. You were sentenced to eight months' imprisonment. At that time you were 20 years of age. The sentencing judge then commented:

"The defendant is 20 years old and has a record of court appearances, starting as a youth. The Youth Justice records include eight charges of destroy or injure property, four of assault, two of assault police, three charges of resisting arrest and four of other anti-authority offences. As an adult, that pattern of offending continues. There are convictions for damage to property, breaches of Family Violence Orders, common assaults and resisting police. Ultimately in June 2015, on similar charges within the established pattern, the defendant was sentenced to a term of imprisonment cumulative with an earlier suspended detention order, but partly suspended. He continued to offend after his release. On 11 April 2016 on a charge of common assault, committed in October 2015...he was sentenced to ten weeks' imprisonment cumulative to a period of four weeks which was imposed as a re-sentencing exercise in relation to the June 2015 matters."

I note all of those offences were committed when you were under the influence of alcohol. Then, on 28 September 2019 you committed further violent crimes. You were again sentenced by this Court on 26 July 2021. Those crimes were committed before the violence against Mr Hicks but you had yet to be sentenced. That matter involved three counts of assault, again all committed when you were intoxicated. On that occasion, the sentencing judge imposed a Home Detention Order with an operational period of 18 months. In his Comments on Passing Sentence, the sentencing judge noted:

"There is no doubt that the principles of general deterrence are important in the assessment of this sentence... further, having regard to your history and the link between violent offending and alcohol, specific deterrence is also important. Finally, I think that Community Protection is also a consideration. The real issue is the extent to which rehabilitation should be emphasised in this sentence. I note that when you were sentenced by this Court on 11 May 2016 for offences related to violent offending, which were committed while you were under the influence of alcohol, according to the Comments on Passing Sentence of the sentencing judge, you acknowledged your problem with alcohol and its link to violent offending, assured the sentencing judge that you had not had a drink for in excess of six months, and appeared to be committed to rehabilitation. You were sentenced to a term of actual imprisonment with the

judge noting that prior suspended sentences had not had the intended effect. You committed the crimes with which I am dealing with under the influence of alcohol three years later."

Those comments are apposite here. During the plea in mitigation presented to Brett J it was submitted on your behalf that you had not consumed alcohol since the incident of 28 September 2019. That was obviously not correct because you were intoxicated when you committed the crime against Mr Hicks on 12 January 2020. It seems then, irrespective of your assertions about your sobriety, caution needs to be exercised. It seems whenever you consume alcohol you have a limited ability to control your temper and violent reactions. You clearly have a serious issue with alcohol consumption and an inability to control your behaviours when affected by alcohol.

That said, I am told that the period of time you spent on the Home Detention Order was a difficult, but nevertheless generally positive one for you. I am told that during the life of the Home Detention Order you did not consume alcohol and you were conscientious about avoiding situations which may lead to conflict. You were referred to a psychologist in the hope of addressing issues flowing from what I accept was a most difficult childhood, but for various reasons that did not eventuate. It is significant that since the commission of this crime against Mr Hicks there has been no further offending. On 20 April 2023, you were sentenced by the Devonport Magistrates Court for the offence of common assault, but that relates to an incident that occurred on 18 December 2019, so shortly before the assault upon Mr Hicks. In respect to that matter, you were sentenced to a three month period of imprisonment, the execution of which was wholly suspended. You were also placed upon a two year Community Correction order and ordered to perform some community service. It seems you have not engaged particularly well with that order and breach action is pending. I accept, however, that there have been some ongoing mental health issues which have made your participation in that order problematic.

I have obtained a Home Detention assessment report in respect to you. Because of your ongoing mental health difficulties, such an order is not recommended. A further period of community based supervision is recommended.

It goes without saying that punching another person to the head and face area is an inherently dangerous act. In my view, that danger was exacerbated by your intoxication. You lacked the ability to judge with any precision the force or effect of your blows. Mr Hicks was attacked on the doorstep of his own home. He was entitled to feel safe and secure within his residence. Drunken violence committed against innocent bystanders is a matter of significant community concern. General deterrence and denunciation are prominent factors in the sentencing exercise. Given your history, so too is specific deterrence and community protection.

For various reasons, this matter has taken a considerable time to come on for trial. A delay in a matter being finalised is not of itself mitigatory, but here it is relevant to the exercise of the sentencing discretion, as in that time it does appear as though you have matured, begun to understand your difficulties and make positive changes. You have not committed any crime of violence for a period of four years now and I am told you have not consumed alcohol for several years. Although, the development of insight and understanding into the link between your alcohol consumption and violence has been a long time coming, it does appear as though you have, particularly since the imposition of the Home Detention Order, developed an understanding of your need to abstain from alcohol and a preparedness to commit to your rehabilitation. The objective seriousness of the offending, and the considerations of general

deterrence, specific deterrence and community protection means a substantial term of imprisonment is warranted for this crime. What I have grappled with is whether it is appropriate to yet again place emphasis upon your rehabilitation, and suspended in part or in full, the inevitable gaol term that must be imposed. On balance, and with some hesitation, I have concluded that the last four years evidences a capacity to rehabilitate and stay out of trouble and I should therefore impose a sentence which continues to encourage you in that regard. Ultimately, you leading a life without violence is better for you, your victims and the community at large. I will suspend the sentence I impose, but you need to clearly understand Mr Johnson this is your last chance. I am also concerned about your compliance with orders that are designed to assist with your rehabilitation. I therefore intend to make it a condition of suspension that you successfully complete a Community Correction Order. If you fail to do so, it will be a breach of the suspended sentence and will most likely result in you going to gaol.

The orders I make are as follows. You are convicted of the crime of assault and the offences of destroy property and breach of bail. In respect to the summary offences I make no further order. You are sentenced to a term of imprisonment of 12 months. The whole of that sentence will be suspended for a period of 30 months on the following conditions:

- 1 you are not to commit another offence punishable by imprisonment during that time;
- 2 you are to comply with and complete the Community Correction Order today imposed.
- 3

I make a Community Correctional Order with an operational period of 12 months from today. The statutory core conditions of a Community Correction Order are imposed. Those conditions will be set out in a document that will be provided to you. In summary, they will include the following conditions that will apply for the entire operational period:

- You must not commit an offence punishable by imprisonment;
- You must report to a probation officer as required by the probation officer;
- You must comply with the reasonable and lawful directions of a probation officer or a supervisor;
- You must not leave or remain outside of Tasmania without the permission of a probation officer; and
- You must give notice to a probation officer of any change of address or employment before or within two working days after the change.

I also impose the following special conditions:

- You must, during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer;
- You must undergo assessment and treatment for alcohol or drug dependency as directed by a probation officer and you must comply with any directions given to you in respect to engagement with alcohol and drug services;
- You must submit to testing for alcohol or drug use as directed by a probation officer;
- You must for the duration of the operational period of the order submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer; and

- You must if directed to do so, attend, participate in and complete the EQIPS aggression programme.

I direct that you must report to Community Corrections, Burnie by close of business today.
I make a compensation order in favour of the Director of Housing in the sum of \$148.97.