

Corey Maxell Downie has pleaded guilty to aggravated burglary and committing an unlawful act intended to cause bodily harm.

On 12 September 2023, I sentenced Mr Downie in relation to the crime of aggravated burglary and adjourned the charge of committing an unlawful act intended to cause bodily harm for which he is to be sentenced today.

It is necessary to refer to the facts of both crimes in these comments as they are closely related.

On 23 November 2021, the complainant, Adam Michael Burnett, was at his home at Cooina Place, Herdsmans Cove. At about 1:00 am on 24 November, the defendant walked from his brother's address at Clayton Drive in Herdsman's Cove to the complainant's address. He had drunk approximately 20 pre-mix cans of alcohol and was heavily intoxicated. He was in company with two or three other people who are unknown.

He and one of his associates jumped over the complainant's back fence. The complainant was asleep and woke to a noise of glass smashing and metal banging, and went to his rear door opened it, yelled out, and closed the door .

The defendant and his associate walked to the rear door and struck it with a screwdriver or similar implement, shattering the glass. Both men entered the unit. The complainant recognised the defendant, Mr Downie, as Mr Downie had commenced a relationship with the complainant's ex-partner, who was the mother of his children.

The defendant tried to hit the complainant with the screwdriver, but missed. The complainant threw a punch in self-defence and has no memory of the incident after that.

The defendant assaulted the complainant by striking him repeatedly to the head and body, causing significant injuries and rendering him unconscious.

The defendant left the unit, leaving the complainant unconscious, alone, and bleeding. Mr Downie, as an indication of how you left Mr Burnett, do you remember the photographs and the state of Mr Burnett when the ambulance attended? For all you knew when you left him, he may not have resumed consciousness. You should be deeply ashamed.

The complainant remained unconscious for a time and, fortunately, did regain consciousness before making his way to a neighbour's house, arriving at approximately 1:45 am. The neighbour answered the door and, seeing the state of the complainant covered in blood and injured, called triple zero. The complainant's injuries were photographed by police and he was then taken by ambulance to the Royal Hobart Hospital.

Mr Downie was identified by the complainant as his assailant and he was arrested on 24 November 2021 and interviewed by police. Initially, he denied involvement and denied knowing the complainant. Then he admitted the complainant's connection with his partner and that he went to the complainant's house "out of stupidity", as he described it, believing the complainant had assaulted his partner some weeks before. He made some admissions to police about what he had done, but not the full extent of his wrongdoing. He said the complainant pulled him into the unit, that there was a fight and punches were thrown on both sides, that he

punched and kicked the complainant, and hit him two-three times while he was on the ground. Mr Downie told police that his memory was poor and that he smashed the door on the way out of the unit.

The complainant was admitted to the Royal Hobart Hospital on the 24 November and was not discharged until some days later on 1 December. He received injuries, which were repaired under general anaesthetic: a large cut to the back of his head requiring 10 staples to close, and a cut to his right eye brow and left upper lip, requiring stitches. He sustained other injuries of a serious kind: a traumatic brain injury with post-assault amnesia and ongoing memory loss. I do not have a medical assessment of any sequelae, permanent, or otherwise related to the brain injury and whether there have been cognitive effects, and I note there is no suggestion of any ongoing support for that traumatic brain injury. Regardless of where that traumatic brain injury is on the spectrum of seriousness, however, a traumatic brain injury is always a serious injury. The complainant also sustained a fractured nose and some loss of vision of his right eye. In addition, he suffered bruising and soreness to his head, arms, and body, and abrasions and lacerations to various parts of his body.

The attack has also had other serious impact on the complainant. His mental health has suffered. He has ongoing daily symptoms of post-traumatic stress disorder. He has not returned to work since the incident due to symptoms such as anxiety, feeling unsafe, hypervigilance, and suicidal ideation. He is now on a disability pension. He requires medication involving antidepressants, mood stabilisers, and sedatives. He needs help and support from family for everyday tasks such as shopping, transport, and attending medical appointments and taking medication. The defendant is in a relationship with the complainant's former partner, the mother of his children and this association causes him severe anxiety and difficulty.

Mr Downie, the distress and terror you instilled in the complainant that night is a grave harm of itself. As can be seen, your violence resulted in serious injury to the complainant, causing him ongoing symptoms. Furthermore, his everyday life has been adversely affected and those effects may be permanent. The harm you have caused him is an extremely serious aspect of this crime.

Mr Downie has a relevant prior conviction for assault committed in 2019 and for that offence and an offence of unlawfully possess a dangerous article he was sentenced to 21 hours' community service.

The pleas of guilty to the indictment before the Court were entered at a late stage and after the trial had been listed twice. The complainant was briefed to give evidence on two occasions. The pleas of guilty have saved the complainant the stress of giving evidence and that is worthy of some discount, but not as much as if it had been at an earlier stage.

Mr Downie is now aged 24 years of age and he was a youthful offender, aged 22 at the time of offending. I note his heavy intoxication to the extent that his recall of the incident is affected, but, as he understands, his state of intoxication does not in any way excuse his behaviour.

Mr Downie has a young child with his partner, the same partner he was with at the time of offending. I note that he lost his employment due to his regular court attendances. He grew up in an environment marred by excessive alcohol consumption. His father was physically abusive and when a young teenager, Mr Downie moved out of home, lived on the streets for 2-

3 months, and then lived with his grandmother. As a young teenager, he began using alcohol, cannabis, and methylamphetamine.

Mr Downie is genuinely remorseful for his actions. He had taken some positive steps by the time he entered his pleas of guilty. He sought help from alcohol and drug services and made progress with respect to his use of methylamphetamine. He was diagnosed with depression and has been prescribed medication. I note he has cut ties with previous associates who were having a negative influence upon him. He is now looking for employment. He wants to be a good father and provide his daughter with the kind of support that he did not have when he was growing up. I ordered a report from Community Corrections as to Mr Downie's suitability for home detention. The initial report noted the progress he had made and noted his situation had improved, but expressed concerns based on his prior response to a community service order imposed some years ago. Community Corrections were then not prepared to assess Mr Downie as suitable for a home detention order. There were reservations about whether Mr Downie would be prepared to put in the hard work to address his rehabilitation in terms of psychological support and counselling, and in terms of drug and alcohol counselling, in particular. On 12 September 2023, I took the step of sentencing Mr Downie on the aggravated burglary and adjourning the crime of committing an unlawful act intended to cause bodily harm in order to give him the opportunity to demonstrate that he could make the additional progress. I made a Community Correction Order for two years with strict conditions.

Mr Downie has been subject to that Community Correction Order since 12 September. I now have a report from Community Corrections dated 24 October 2023 as to his progress. It is a very positive report. I quote the report:

"Mr Downie was sentenced to a 24-month Community Correction Order on 12 September this year. Since this order commenced, Mr Downie has attended four out of four supervision appointments. During this time, Mr Downie has commenced engagement with drug and alcohol counselling, maintained abstinence from illicit substances, and completed a mental health care plan. Mr Downie has demonstrated excellent compliance and attitudinal change comparatively to previous community-based orders."

Mr Downie, I see some positive reports, but I do not often see compliance described as excellent. It is a credit to you. You are now assessed as suitable for a home detention order and a community service.

As I have said, you are genuinely remorseful for your conduct and, indeed, I regard the steps you have taken as demonstrating your understanding of the seriousness of this matter and the seriousness of the violence you inflicted upon the complainant, and also demonstrating a determination by you to reform.

On the last occasion, I made it plain that you were facing an actual gaol sentence. The Court and community are appalled by this brutal violence upon a person in their own home. The sentence I impose must reflect that view and deter you and others from such crimes. Ordinarily, a lengthy term of actual imprisonment would be required. In your case, in light of your youth and your determination to reform, and the significant positive steps you have taken, I am satisfied that these goals can be met by a period of home detention, which involves a substantial deprivation of liberty and the wearing of an electronic monitoring device, as well as a

community service order. I am satisfied of the pre-requisites of this order. I just need to check that you consent to me making a home detention order? (Mr Downie indicated his consent).

Because the matter is so serious and the sentence I will impose today is exceptional, I want to be sure that you are going to continue on the positive path you have taken. I will require you to come back to Court so I can be informed about your progress. I will require you to come back to Court in approximately three months' time when I will receive an updated report about your progress.

I record a conviction and impose a home detention order for 12 months from today. I impose all of the core conditions of that order set out in s 42AD(1) of the *Sentencing Act*:

- (a) you must not, during the operational period of the order, commit an offence that is punishable by imprisonment;
- (b) you must reside at the home detention premises at [address specified] at all times;
- (c) you must, during the operational period of the order, be at the home detention premises during all times and days of the week, except if, for a relevant reason, you are not on those premises;
- (d) you must, during the operational period of the order, permit a police officer, probation officer or prescribed officer to enter the home detention premises;
- (e) you must, during the operational period of the order, permit a police officer to –
 - (i) conduct a search of the home detention premises; and
 - (ii) conduct a frisk search, within the meaning of the *Search Warrants Act* 1997, of you, at the home detention premises or at any other place or premises; and
 - (iii) take a sample of a substance found on the home detention premises or on your person;
- (f) you must comply with any reasonable and lawful directions of a probation officer or prescribed officer, including any directions as to the kind of employment, or the place of employment, of you;
- (g) you must, during all of the operational period of the order, submit to electronic monitoring, including by wearing or carrying an electronic device:
 - (i) you must not tamper with, damage or disable any device used for the purpose of the electronic monitoring; and
 - (ii) you must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring;
- (h) you must, during the operational period of the order, if directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of an illicit drug;
- (j) you must, during the operational period of the order, when directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of alcohol;

- (k) you must, during the operational period of the order, if directed by a probation officer or prescribed officer to engage in a personal development activity, counselling, or treatment, engage in the activity, counselling or treatment in accordance with any directions given by the probation officer or prescribed officer.

In addition, I impose the following special conditions:

- (a) you must immediately attend, upon your release from Court, the Community Corrections office at 75 Liverpool Street, Hobart, for induction onto this order.
- (b) you must, during the operational period of the order, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact at all times;
- (c) you must submit to the supervision of a community correction officer as required;
- (d) you must not take any illicit or prohibited substances, and illicit or prohibited substances are widely defined to include any controlled drug as defined by the *Misuse of Drugs Act* and any medication containing an opiate, benzodiazepine, ubipropine, hydrochloride or pseudoephedrine unless you provide written evidence from your medical professional that you have been prescribed that medication;
- (e) you must not consume alcohol, and you must, if so directed by a police officer or community corrections officer submit to a breath test, urine test or other tests for the presence of alcohol;
- (f) you must attend Court on Friday 9 February 2024 at 2.15 pm for the review that we have discussed.

As a further sentencing order, I impose a community service order of 98 hours.