

Mr Clarke, a jury found you guilty of one count of Criminal Code 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 of the crime of assault, they must have accepted in all essential respects, the evidence of the complainant, Mr Axton. With one exception I shall mention shortly, I considered the evidence of Mr Axton to be credible and I will sentence on the basis that the assault occurred essentially as he described.

As at May 2021, both you and Mr Axton lived in Rosebery. The two of you were known to each other. You had been friends but the relationship had soured and as at May 2021 there was a strong animosity between you and Mr Axton. It is not necessary to traverse in any detail the reasons behind that animosity. In simple terms, you were of the belief that Mr Axton knew something about a house fire that had occurred at your home in October 2019. Additionally, there was an issue between you and Mr Axton pertaining to the care of a dog you had given him. You also considered Mr Axton unjustifiably blamed you for a fire that had occurred at a hardware store belonging to a friend of Mr Axtons. Tendered on the trial was a record of interview you participated in with police about this incident. It was blatantly obvious from your conduct during that interview that as 21 May you harboured considerable resentment towards Mr Axton.

On the afternoon of 21 May, both you and Mr Axton were at the local hotel. There was no interaction between the two of you whilst there, save that I am satisfied you stared at Mr Axton for a period of time. Mr Axton left. You left shortly after. Mr Axton proceeded to walk towards his girlfriend's residence. That took him along Morrisby Street. You followed him in your vehicle. I am satisfied you deliberately followed him. If you were going home, you would have gone in the opposite direction. You pulled the car up adjacent to where he was walking.

You exited your vehicle and began to verbally challenge Mr Axton about issues pertaining to the dog. You were verbally abusive towards him. It may be at this stage you pushed Mr Axton but I cannot be satisfied beyond reasonable doubt about that given the conflict in the evidence. In any event, Mr Axton began to walk away. You struck him from behind to the back of the head and then pushed him in his side. He fell to the ground. You proceeded to punch him a number of times to his head and face area. Whilst he was lying vulnerable on the ground, you also kicked him. In his evidence, Mr Axton said that you had tried to stomp on him. I am not satisfied you in fact, made contact with him by any stomping action. I will not sentence on the basis that you stomped on him, but all of the injuries that Mr Axton suffered were a consequence of your attack upon him.

When Mr Axton was pushed he lost hold of the mobile phone he was carrying and it fell to the ground. You picked it up and deliberately smashed it onto the ground. You have pleaded guilty to an offence of destroy property. I will deal with that pursuant to s 385 of the *Criminal Code*.

I am satisfied your attack upon Mr Axton occurred because you were unable to control your temper given the animosity you felt towards him. There is no evidence that on this day Mr Axton did anything to provoke you. The assault occurred because you were unable to exercise

control. Whilst I am unable to conclude the assault was pre-meditated, it is aggravating that you followed Mr Axton from the hotel and put yourself in a position whereby the confrontation occurred. Your assault upon Mr Axton was in my view completely unjustified and unwarranted.

Mr Axton subsequently attended the North West Regional Hospital. He had bruising to both of his eyes and to his nose. A subsequent CT scan revealed his nose had been fractured. The septum was deviated. Surgical correction was required. Mr Axton underwent that surgery and the operation and recovery were largely uneventful.

Mr Axton described in his impact statement that he experienced considerable pain, both before and after the surgery. He had difficulty in sleeping due to the discomfort. He also now feels far more apprehensive and cautious.

You are 52 years of age, married with two children. You had a strong employment history until sustaining a back injury. Since that time you have been on a Disability Pension and you undertake the primary parenting role for your children whilst your partner works. You have a limited criminal history, predominately for driving offences and there is one matter of dishonesty. You have no recorded criminal history for matters of violence. In October 2019, your home burnt down. Since that time, I accept you have struggled emotionally and probably financially. As I have noted it seems you believed Mr Axton knew something about the fire and you held a grudge against him. You allowed your feelings of antipathy towards Mr Axton to spill out of control on this day. I accept however it was out of character behaviour for you.

It goes without saying that punching another person to the head and face area is an inherently dangerous act. One of your blows was delivered from behind, with Mr Axton having no opportunity to protect himself. He was standing on a hard gravel surface. He fell onto that surface. All too often, courts have dealt with matters where even a single punch in such circumstances can, and often does, lead to life changing injury or even death. On this occasion, it is fortunate the injuries sustained by Mr Axton were not worse.

People endeavouring to settle grievances through the use of violence is a matter of significant community concern. General deterrence and denunciation are prominent factors in the sentencing exercise. Because of that, the harm you caused and the objective seriousness of your offending, I am of the view that a period of imprisonment is warranted. That period of imprisonment should, however, be suspended given your lack of prior convictions and my satisfaction that this an aberration and not reflective of a propensity towards violence generally.

You are convicted of the crime of assault and the offence of destroy property. In respect to the summary offence I make no further sentencing order. You are sentenced to a term of imprisonment of six months. The whole of that sentence will be suspended for a period of 18 months on condition that you are not to commit another offence punishable by imprisonment during that time. I make a compensation order in favour of Daniel Axton in the sum of \$300.00.