

STATE OF TASMANIA v NADAN WAYNE HALL
COMMENTS ON PASSING SENTENCE

9 FEBRUARY 2024
WOOD J

Nadan Wayne Hall has pleaded guilty to one count of wounding. On 4 February 2023, he stabbed Steven Barwick to the abdomen with a knife.

At approximately 1:00 pm, the defendant was waiting at a bus stop on Church Street in Rokeby, when there was a chance encounter with Mr Barwick. The defendant and Mr Barwick had known each other for a number of years and there was a history of animosity between them.

Mr Barwick was a passenger in a motor vehicle, with his mother and female cousin, which drove along Church Street towards the Ampol Service Station to park out the front of the service station.

As the vehicle drove past the defendant, it slowed down almost to a stop, and the driver's side door and a rear passenger door opened slightly for a short time while the vehicle was in motion. Mr Barwick yelled abuse from the car, saying to the defendant that he was dead. The vehicle regained speed and stopped nearby. Mr Barwick got out of the car and walked very quickly towards the defendant. The incident that followed was captured on CCTV cameras at the Ampol Service Station.

The defendant removed a backpack he was wearing, took out a knife, and ran towards Mr Barwick who was gesticulating and shouting, and still walking towards the defendant as the defendant was running towards him.

When the defendant had nearly reached Mr Barwick, Mr Barwick started to run towards the defendant. The defendant stopped and Mr Barwick tried to kick him. Then, Mr Barwick grabbed the defendant's shoulders with both hands, pushing him, and punched the defendant to the head. The defendant was holding the knife in his right hand and, while Mr Barwick held on to the defendant's shoulders, the defendant swung his right hand into the complainant's abdomen on his left side.

Mr Barwick pushed the defendant away, and hit him to his back. The men fell to the ground, with the defendant on top of Mr Barwick. Mr Barwick's mother came to his assistance and, together, they restrained the defendant. Police and ambulance attended, but by then the defendant had left the area. Mr Barwick was lying on the ground bleeding and in pain. He was conveyed by ambulance to the Royal Hobart Hospital and admitted. The wound, 4 cm by 1 cm to the left side of his abdomen, required sutures. Fortunately, the knife had glanced a rib, preventing internal injury. Mr Barwick was admitted to hospital for some eight days, indicating there were concerns held about the wound.

Mr Barwick has also been emotionally and psychologically harmed by this incident. He suffers from anxiety and depression, and has become socially isolated. His mother was a witness to the incident and she has also been adversely affected.

The defendant went to the police station that evening, complying with the police request that he do so. He participated in a video interview and made full and frank admissions. He said he had a steak knife in his bag for his own protection. He described the car going past, and a male calling out, "You're dead, dog". He pulled out the knife to scare them, referring to the occupants of the car. He later recognised the male when he ran at him. He had been threatened by him before. He told the police that he estimated being punched thirty times to the side of the head. That is not correct. He expressed remorse, and said he was sorry he cut the complainant and

that he was glad he was "okay". The police located the knife in the area where the defendant said he had disposed of it.

The defendant was in custody serving a sentence of imprisonment until 3 May 2023, and has been remanded in custody on this matter since then.

The defendant is aged 33. He has relevant prior convictions including two charges of rape committed in October 2014, an assault contrary to the Criminal Code in June 2015, an offence of unlawfully possess a dangerous article in a public place committed in June 2021, and common assault in January 2022 and February 2022, both family violence offences. It would seem, from his record, that he was on bail for one of those assaults and the unlawful possession of a dangerous article at the time he committed the crime of wounding. On 11 August 2023, for those offences and others, he received a sentence of six months' imprisonment, three months of which were suspended for two years, backdated to 4 February 2023.

The defendant's personal circumstances and background are relevant to the sentence to be imposed. His parents separated when he was a child and he lived with his father, who was violent towards him. School was a particularly difficult environment, given that he has attention deficit hyperactivity disorder, an intellectual disability, exhibited behavioural problems, and was bullied. His last year of school in grade 11 was completed in an alternative education program with Youth Arc.

The defendant is able to read but has difficulty with comprehension. He has pursued courses and learning while in prison. He completed a certificate in agriculture in 2020 and obtained a white card in 2023. He has received a disability pension since 2007, and has minimal work history despite being motivated to gain employment.

I take into account that he has pleaded guilty at a relatively early stage.

Community Corrections have had past involvement with the defendant and I have a report which refers to his difficulties, as well as particular needs, support and intervention the service has put in place for him. He has a history of mental health concerns, including schizophrenia, anxiety, depression and ADHD. He has had appointments with a psychologist which revealed a diagnosis of borderline personality disorder with anti-social traits. The defendant lacks consequential decision-making skills, arising from his intellectual disability, which impact his reasoning, and judgment, and presents a risk for further offending.

I also have a report from psychologist Dr Katie Dykes of 2 February 2022, which states that in 2016, Mr Damien Minehan suggested that the defendant as a highly impulsive and emotionally labile individual with poor emotional regulation. Dr Dykes notes that his intellectual difficulties have been assessed and that he would have great difficulty in a wide variety of situations that require thinking and reasoning abilities. His full scale IQ score has been assessed and falls between 58 and 66.

The defendant is assessed by Community Corrections as needing a high level of supervision and supports for a lengthy period of time. This support would be comprehensive and addresses issues and concerns such as anger management and his behaviour and responses to stress, as well as drug counselling and his mental health conditions. Engagement with a psychiatrist is recommended.

The report from Community Corrections is positive in a number of respects. The defendant has insight and understands he needs help with his behaviour. During his time in prison, he has engaged with agencies that have provided him with support. He has personal goals for when he is released into the community, such as employment and driver education programs,

exploring his Aboriginal background, and positive hobbies like fishing. He has engaged successfully with Community Corrections in the past and the report tells me that he has demonstrated "good compliance". Significantly, while subject to a recent supervision order, he did not reoffend.

When the defendant is released from prison he plans to live with his grandfather and sister in Port Huon. He has a close relationship with them and they are supportive of him. He plans to help his grandfather with farm work and keep away from so-called friends who are a bad influence.

The report also reveals that the defendant has been engaged with the National Disability Insurance Scheme since 2018, and when in the community, he has had assistance with daily living and behavioural management strategies. These supports will also be available for him on release, and Community Corrections have told me they would work collaboratively with the defendant's NDIS support co-ordinator to address issues and concerns.

The circumstances in which the crime was committed need to be taken into account. As mentioned, the defendant knew Mr Barwick. He was assaulted by Mr Barwick in 2016 when they were both in gaol. In 2022, Mr Barwick's former girlfriend was staying at the defendant's house, and Mr Hall was threatened.

In terms of the incident, I take into account that the defendant did not start the conflict. I note the defendant reacted by pulling out a knife and running towards Mr Barwick after being threatened and when Mr Barwick had started approaching him in an aggressive fashion. The wound was inflicted when the defendant was being assaulted by Mr Barwick.

However, there are serious matters that must be reflected in this sentence. Pulling out a knife and using a knife to scare someone in a conflict situation is fraught with danger. Mr Hall, you ran at Mr Barwick holding the knife and aggressively engaged in the altercation while you had the knife. Mr Hall, I am sure you know that, often when a knife is brought out in a situation involving conflict and aggression, someone gets hurt; badly hurt. You should have run away and not pulled out the knife. You understand that Mr Barwick could have been very seriously harmed; the wound might have killed him. I see that you understand that, and you told the police you are very grateful that he is okay.

In my view, your individual circumstances, your co-operation with authorities, and remorse - the fact that you are sorry for what you did, should be given weight. You have a range of difficulties that need intensive and extensive supports. To your credit, you understand the importance of engaging with Community Corrections, NDIS, a psychologist and psychiatrist, and other agencies to help with your behaviour so that you do not reoffend. Your reform is not only in your interests, but also in the interests of your community, and I consider, in view of your attitude and your understanding and insight, that you have prospects of reform which should be encouraged.

An individualised approach is warranted and significant weight is given by me to your rehabilitation.

Mr Hall, in relation to the charge of wounding, I record a conviction and I impose two years' imprisonment backdated to 3 May 2023.

I suspend 14 months of that sentence on strict conditions for a period of two years and six months. You will have a few weeks to serve and then you will be released on very, very strict conditions. These conditions will be in place for two years and six months from the date you leave gaol.

Conditions of that suspension are:

You must not commit an offence punishable by imprisonment for that period of two years and six months from the date of your release.

You must submit to the supervision of a probation officer for that same period of time.

You must report no later than 4 pm to a probation officer at 75 Liverpool Street, Hobart within one working day of being released.

You must report to a probation officer as required by the probation officer.

You must comply with all the reasonable and lawful directions of a probation officer

You must not leave or remain outside Tasmania without the permission of a probation officer and must tell your probation officer of any change of address or employment before, or within two working days after, the change.

You must attend educational and other programs as directed by a probation officer.

You must undergo assessment and treatment of drug dependency as directed by a probation officer.

You must submit to testing for drug use if that is directed by your probation officer.

You must, for that same period of two and a half years from the date of your release, submit to medical, psychological, or psychiatric assessment or treatment as directed by a probation officer.