

Mr Grantham, you have pleaded guilty to one count of assault contrary to s 184 of the *Criminal Code*. On 5 December 2022, you unlawfully assaulted your mother's partner, Mr Simon Kirby.

At the relevant time you and your partner were homeless and Mr Kirby had been kind enough to allow you to live in a tent at his property. At approximately 6.00pm on 5 December 2022, you entered the complainant's home. There was a discussion about your motor vehicle and whether you and your partner intended to move into a caravan that was available for you at your sister's residence. The conversation became heated. You cupped a glass tumbler which you were holding in your hand and pointed it in the direction of the complainant and yelled for him to get out. Understandably, Mr Kirby reminded you that it was his house and that it was you that should depart. As he said this, he banged a chair onto the floor to emphasise his point. You went towards the complainant, took hold of him and both of you fell to the ground. Whilst the complainant was on the ground, you struck him with the glass tumbler in what is described as "an open palm movement". The glass struck the side of the complainant's scalp and shattered. You then punched the complainant with a closed fist to the head and face area. Your mother yelled that she was going to call the police. You stood up and left the residence.

The complainant, who was bleeding, was transported to the North West Regional Hospital. He had two open wounds, each approximately three centimetres long. There was swelling and bruising around the wounds. There was also bruising to the left side of his eye.

Later that evening you sent text messages to your mother suggesting you were sorry for the incident, but also indicating that you blamed the complainant for starting it. The text messages were certainly not suggestive of the type of genuine remorse a court looks for in mitigation of sentence.

On 12 January 2022 you were arrested. You participated in a record of interview. You made admissions as to your actions but again suggested the complainant had started it. On 8 February 2024, the State were advised that this matter would resolve by way of a plea of guilty. It could not be said that this was an early plea of guilty. I do not consider the plea to be reflective of remorse. The plea, nevertheless, retains utilitarian value.

The complainant has been badly affected by your assault upon him. Your behaviour frightened him. He has had difficulty in sleeping and has ongoing feelings of anxiousness. He now very much keeps to himself. The incident has also caused difficulties within his relationship because his partner is your mother.

I, of course, must sentence you on the basis that you did not intend, nor foresee, the likelihood of the complainant being wounded. Nevertheless the use of a weapon, which is objectively capable of bringing about such an outcome, is a serious feature of this crime. The complainant was considerably older than you. You delivered blows to the head and face area when he was vulnerable and defenceless on the ground. It is fortunate, in my view, the complainant was not more severely injured.

You are 33 years of age. You are in a long term, stable relationship. You have held various positions of employment since the completion of your education. You are currently undertaking garden maintenance work. You and your partner have experienced homelessness

since June 2022. At present, you are staying with your sister. When you were 25, your father passed away. I am told that was a very difficult experience for you and your mental health deteriorated rapidly around that time. You have been on a waitlist to see a psychologist for a considerable period.

You have no relevant prior convictions for matters of violence. I note, however, you do have a number of prior convictions under the *Road Safety (Alcohol and Drugs) Act* for driving with illicit drugs present in your system. I am told that you have reflected upon your behaviour and now appreciate that it was unacceptable. Whilst you have been awaiting the resolution of this matter, you have been on bail conditions which have prevented you from attending the complainant's home, which is where your mother lives. Consequently, your relationship with her has been impacted which, I am told, has been a salutary lesson for you.

All forms of violence are unacceptable, but your resort to violence in the circumstances here was entirely unwarranted. Your conduct in delivering a number of blows to the head and face area, whilst the complainant was on the ground, is disgraceful. Attempting to deter others from the use of violence is an important sentencing consideration. Whilst I accept it is unlikely that you will reoffend, the sentence nevertheless needs to mark the seriousness of this crime.

I take the view that a sentence of imprisonment is appropriate, but that the execution of the whole of that sentence can properly be suspended on conditions. You are convicted of the crime of assault and sentenced to six months' imprisonment, the execution of the whole of which is suspended on condition that you commit no offence punishable by imprisonment for a period of 18 months. I need to warn you that the condition means precisely what it says. Any offence punishable by imprisonment, will breach the terms of the suspension and render you liable to serving it, including breaches of the *Road Safety (Alcohol and Drugs) Act*.

I make a compensation order in favour of Simon John Kirby in an amount to be assessed.