

**STATE OF TASMANIA v ZANE ANDREW HENDERSON and JAYDE PATRICK
BURLING
COMMENTS ON PASSING SENTENCE**

**15 APRIL 2024
BLOW CJ**

Mr Henderson and Mr Burling have each been found guilty by a jury on a joint charge of aggravated burglary and a joint charge of assault. On 3 April 2020 they travelled together to the home of a Mr Brown in Newnham for the purpose of assaulting a man whom they had never met. They committed the crime of aggravated burglary by entering the residence as trespassers with that intention. Inside the house they found the intended victim, a man named Andrew Clark. I am satisfied beyond reasonable doubt that Mr Henderson struck him to the face with Mr Brown's hammer, and that Mr Burling punched him from behind, striking in the area of one of his shoulders.

Shortly before this incident there was some sort of unpleasantness between Mr Clark and his partner, a niece of Mr Brown. A phone call was made. That resulted in Mr Henderson, Mr Burling, a sister of Mr Clark's partner, and another woman travelling together to Mr Brown's home by car. The two women waited in the car while the two men went inside and assaulted Mr Clark. Mr Brown had left his hammer in the front porch. Mr Henderson armed himself with it. They knocked on the door. Mr Brown opened the door but closed it again. One of the visitors kicked it open, damaging the woodwork of the doorway.

The blow with the hammer caused a minor wound to Mr Clark's forehead, just above the bridge of his nose. It bled briefly. An ambulance was called, but he chose not to be taken to hospital. The punching did not cause him any injury. Mr Clark did not provide a victim impact statement. He gave evidence at the trial, but was a most unwilling and uncooperative witness.

Mr Henderson was 24 years old on the day in question and is now 28. He has had an extremely difficult life. He became a ward of the State when he was very young. He lived in a variety of placements. He became drug addicted by the age of 11, and was homeless when he was 13. He had little education. Not surprisingly, he has an extensive criminal record, and has served terms of imprisonment as an adult. His convictions are mainly for crimes of dishonesty. Significantly, he was sentenced to 22 months' imprisonment in 2017 for an assault committed by him in 2014 when he was 18. He has spent much of his adult life in prison. On 29 January 2020, about nine weeks before the attack on Mr Clark, a magistrate made a drug treatment order in relation to a large number of dishonesty offences committed by him. That drug treatment order appears to have come to an end as a result of this offending. He was arrested on 22 April 2020 and spent some time in custody after that.

In the four years that these charges have been pending he has been sentenced to imprisonment twice for subsequent offences. In November 2021 a magistrate sentenced him to nine months' imprisonment for various dishonesty, drug, firearms and other offences. He is currently serving a sentence of four years' imprisonment, with a non-parole period of two years, on a charge of aggravated armed robbery. He committed that crime in June 2021. He robbed two men at gunpoint on that occasion. He will be eligible for parole on 2 July 2024. He has been in custody since 12 December 2023. To his credit, he was on bail for three months before that date and did not commit any offences during that time. The sentence that I impose today will have to be a little lenient because it comes on top of the sentence that he is currently serving.

During 2023, whilst in custody, he obtained some counselling about the abuse that he suffered as a child. When he was at liberty later in 2023 he obtained counselling from Relationships Australia. Since his return to prison he has been obtaining therapeutic counselling.

Mr Burling was 23 years old on the day in question and is now 27. He had little in the way of prior convictions at the time of this offending, but was on bail on some family violence charges at that time. Later in 2020 a magistrate sentenced him to 16 weeks' imprisonment on those charges, suspending all but 47 days of that sentence. A magistrate made a drug treatment order in September 2021 in relation to various drug, driving, firearms and other offences committed by him. That drug treatment order came to an end during November 2021, and he was required to serve 120 days' imprisonment. In October 2023 a magistrate gave him a wholly suspended sentence of three months' imprisonment and made a community correction order requiring him to perform 49 hours' community service in relation to some family violence, drug and other offences.

He has a good work history. He does casual work for a scaffolding company and in a relative's plastering business. He has three children as the result of a past relationship. They live with their maternal grandmother and he sees them on alternate weekends. He has made efforts to overcome his drug problems in the past, and has stayed out of trouble since his appearance in the Magistrates Court last October. His counsel told me that he had relapsed or returned to drug use recently, but is now determined to remain clean, and was obtaining assistance from his general practitioner.

He played a very minor role in the home invasion and the assault on Mr Clark. He did not arm himself with a weapon, but did not withdraw from the attack when Mr Henderson spontaneously armed himself with the hammer.

These charges are stale charges, and that is not the fault of either Mr Henderson or Mr Burling. The delay from 2020 until 2024 appears to have been the result of the COVID pandemic and the backlog of criminal trials in this Court.

In all the circumstances, I do not think I should send Mr Burling to prison today for his part in this offending. A probation officer has reported that he is not considered suitable for further court ordered community service or further supervised probation. In the circumstances I have decided that the only appropriate course is for me to impose a suspended sentence and leave it up to him to see whether he behaves himself or not. He is on the brink of going to prison this afternoon and if he reoffends during the next couple of years he can expect to go there.

Mr Henderson played a more serious role in this offending. He did not travel to the scene of the crimes with a weapon, but did arm himself with a hammer when he saw it. He could have done far more damage to Mr Clark with that hammer than he did. Mr Clark is probably lucky that he was not injured more seriously. I should impose a heavier sentence on Mr Henderson than on Mr Burling because of Mr Henderson's worse record and his more violent role in the offending.

Zane Andrew Henderson, I convict you and sentence you to five months' imprisonment, cumulatively with the sentence that you are currently serving. You will not be eligible for parole until you have served eleven weeks of this sentence.

Jayde Patrick Burling, I convict you and sentence you to three months' imprisonment, wholly suspended on condition that you commit no offence punishable by imprisonment for a period of two years.