

STATE OF TASMANIA v DANIEL REGINALD CLARKE
COMMENTS ON PASSING SENTENCE

3 MAY 2024
JAGO J

Mr Clarke, you have pleaded guilty to one count of assault contrary to s 184 of the *Criminal Code*. That plea was entered following the empanelment of a jury in respect to an indictment charging persistent family violence. The Crown accepted your plea to the crime of assault in satisfaction of the indictment.

The victim of your crime was your partner N. The two of you had been in a significant relationship since about 2010. There are three daughters born to that relationship. At the time of this crime they were aged 7, 6 and 4. In August 2019, you and N were having constant arguments. A point of tension was the amount of time you were spending at an Outlaw motorcycle club.

One Friday in August 2019, you were at the clubrooms assisting with preparations for an event. N was at home with the children. The children indicated they wished to see you so N drove to the clubrooms with the children. When you saw her arrive, you approached the vehicle and asked her what she was doing there. She responded "What do you think I am doing here. Can you just come home." There was a verbal argument. You took hold of N's head. You had one hand either side of her head and your thumb pressed into her left eye. It was painful. The children were in the car with N. They observed your violence towards their mother. They screamed. N ran from the vehicle and you chased her. You pushed her up against a wire fence and held her by the throat with one hand and pressed your other hand onto the side of her neck. You were shouting at N whilst you did this. N was pushed back hard against the fence. Eventually she broke free and ran back to the car. Part of the incident was witnessed by people at a nearby residence who had been alerted by the yelling and screaming.

N did not report the matter to police initially. I suspect that had a lot to do with the fact you had sent her a number of threatening text messages, including messages which suggested you would "get" her father and brother if she called the police. You also sent a message to the effect of "you do that and I get charged and see what happens. I will give you a reason to have me charged...". On another occasion during a telephone call with N, you made a threat suggesting all you needed to do was "make one phone call".

Eventually, in June 2020 N reported the matter to police. You were interviewed and denied the assault. You said that N's version of events were "a straight up lie". Clearly then you displayed no remorse whatsoever for the violence you had inflicted upon N. You tried to dissuade her from reporting the matter to police and when confronted by an allegation that you had assaulted her, you suggested she was lying. Your threatening and intimidating behaviour after the assault is one of the very reasons why family violence is such an insidious problem within the community. It is not just the physical impact of the violence which causes concern, but also the emotional harm it causes. There is no suggestion N suffered physical injury as a consequence of the assault, although I have no doubt she would have been adversely affected by the violence in both a psychological and emotional sense. Whilst of course the physical harm, or lack thereof, is always a relevant sentencing consideration, it is the attitude that it is somehow acceptable to use violence within a relationship to resolve grievances that must also be condemned.

You are 35 years of age. You have a long history of criminal offending, including prior convictions for dishonesty matters, matters of violence against both person and property,

offences contrary to the *Misuse of Drugs Act* and the *Firearms Act*, bail offences, driving offences, offences committed against police and offences against good order. It would be a fair assessment to suggest your record of prior convictions demonstrates you have scant regard for the law. I do accept that there appears to have been an abatement in your offending in more recent times. The last matter of violence for which you were convicted occurred in 2010. In 2013, you were convicted in this Court of conspiracy. Since then, however, your offending has predominantly been driving offences contrary to the *Road Safety (Alcohol and Drugs) Act* and some offences against police. I am told that you have a number of matters pending before the Magistrates Court, and in respect to some of those matters, including common assault, destroy property, breaches of an interim Family Violence order and breaches of bail conditions, you have entered pleas of guilty. The last of those matters occurred in April 2023. It could not yet be said then that your attitude has evolved to one of a law abiding citizen, and specific deterrence remains a weighty sentencing consideration.

You have a strong industrial record. You have worked in various positions of employment, ranging from working in an abattoir and as a fisherman, to working in the mining industry. Historically, you have experienced drug and alcohol difficulties, but I am told that when you commenced your relationship with N, those difficulties largely resolved themselves. You have not worked in fulltime employment since the end of 2019, but you currently have regular casual employment. I am told that the association you formed with the Outlaw motorcycle club, which created the pressures within the relationship with N, has now come to an end and you have severed all ties with that club.

This crime occurred nearly five years ago. Since then, you and N have repaired your relationship to the extent that you now share an amicable relationship as co-parents. You spend regular time with the children, seeing them several times per week and taking them on outings. You support them in their sporting endeavours. N provided your Counsel with a letter indicating support for you. In that letter she records that she has noticed a significant change in you, particularly over the past six to twelve months. She comments that your relationship with the children is a most positive one and she also describes the relationship between the two of you as much improved. She intends to arrange for the two of you to attend at family counselling with a view to further improving your co-parenting relationship. She fears the children will be adversely affected if you are sent to gaol. Whilst I take her comments into account generally, as they are relevant to your prospects of reform, I make it clear that her view as to any sentencing outcome carries minimal weight in the sentencing exercise. Family violence is a matter of significant community concern, and a fundamental sentencing obligation of this Court is to make it very clear to those who commit it, that it will not be tolerated, and it will be punished.

I take into account your plea of guilty. It retains a mitigatory value. The plea of guilty was entered after N failed to appear on the first day of the trial and a warrant was issued for her arrest. Prosecuting the trial would have been challenging for the State. The complainant has also been spared the ordeal of giving evidence in circumstances where, I suspect for a number of complex reasons, she was reluctant to do so.

Family violence crimes are always serious. They inherently involve a breach of trust and are typically committed against vulnerable complainants. It is considerably aggravating that this crime was committed in front of the children. It is now well understood that exposing young children to family violence can have significant adverse consequences for them. Courts have on many occasions emphasised the need to condemn family violence and in sentencing such

matters, general deterrence, denunciation, punishment and protection of victims are paramount sentencing considerations. In my view, the seriousness of your behaviour warrants a period of imprisonment. I note you have spent a period of time in custody for matters that were not ultimately prosecuted. You are entitled to have that time, not otherwise allocated to a sentencing order, taken into account. The question I have grappled with is whether I should send you back to goal today. I have determined that given it has been 12 months since there has been any offending, and given the changes that you appear to have made in more recent times, it is appropriate that the balance of the period of imprisonment be suspended. You need to very clearly understand however, Mr Clark, that if you are foolish enough to breach the terms of the suspended sentence, it is almost inevitable, in my view, that you would go to gaol.

I make the following orders. You are convicted of the crime of assault. You are sentenced to ten months' imprisonment, backdated to 10 January 2024 to take into account time spent in custody and not otherwise allocated. The balance period of imprisonment will be suspended on condition that for a period of two years from today, you commit no offence punishable by imprisonment. Pursuant to s 13A of the *Family Violence Act*, I record this crime as a family violence offence. Pursuant to s 36 of the *Family Violence Act*, I make a Family Violence Order. The Family Violence Order will be in the same terms as the Police Family Violence Order dated 14 March 2023, save that conditions 4 and 11 of the Police Family Violence Order will not be imposed. There will be one additional order as follows: At any time Daniel Reginald Clarke is requested to leave the premises of [address stated], or any other place where [complainant named] may from time to time be living or staying, he must immediately do so. This Family Violence Order will operate for a period of five years from today.