

STATE OF TASMANIA v DAMIEN SCOTT FISHPOOL
COMMENTS ON PASSING SENTENCE

24 AUGUST 2023
GEASON J

You appear for sentence upon your plea of guilty to an indictment for wounding. Shortly after midnight on Saturday, 11 December 2021, you were at home at Arthur Street in North Hobart. Your parents were also at that address, sleeping in their bedroom. Around this time, the complainant and his partner arrived at an adjoining unit. They were visiting a friend and had planned to stay the night there with him. Shortly after their arrival, the complainant's car alarm was activated. You could hear the noise and opened your front door and yelled out to the complainant words to the effect of, "Shut it up, or I'll shut it up for you." The complainant yelled back at you and you both continued to yell threatening remarks at one another.

The complainant then walked from outside of the adjoining unit towards your property. Seeing him coming, you went back inside the house and grabbed a replica sword before returning back outside. By that stage, the complainant had entered the property through the front gate and was walking aggressively towards you.

You approached him and met on the driveway of the property. There was a brief physical confrontation between the two of you before you began to swing the sword at the complainant. He raised his arm in a defensive manoeuvre and you hit him to the arm a number of times with the sword. At this point, the complainant's partner arrived and told you to get inside. You returned inside the home and shut the front door.

The complainant and his partner returned to the adjoining unit. A member of the public phoned triple zero. Tasmania Police and Ambulance Tasmania arrived within minutes. They entered the adjoining unit and observed droplets of fresh blood throughout the property and the complainant in the bathroom, bleeding from a number of lacerations to his left arm. He was taken to hospital by ambulance. Police then attended your unit, where you presented yourself and were arrested. You were co-operative with police and identified a replica sword near the front door of the unit that you had used during the altercation.

You were taken to the Hobart Police Station and interviewed. Under caution you stated that you had heard beeping horns and went outside and yelled out, "Shut the bloody hell up or I will shut you up." A voice came back saying, "Want to fucking go," or something like that. You stepped back inside and grabbed a small ornamental sword.

You said the next thing you noticed was that the complainant had come in through the gate and onto the property. You said you felt threatened and you hit the complainant with the sword. You said the complainant was coming at your parents' house and your father is really sick at the moment. You did not sustain any injuries. You said the complainant threw his arm up trying to protect himself a few times. You said you knew that he had got some pretty serious injuries and you were not sorry about that. You were charged and detained for court.

The complainant was admitted to the Royal Hobart Hospital, where he was observed by treating medical practitioners as having several deep lacerations to his forearm, down to his bone, but without associated fractures. He underwent surgery for exploration, wash out and repair of the wounds to his arm.

You are 45 years old, single with no dependants, and you receive a disability support pension for a long-term foot injury and associated pain and back injury. You have lived in the unit in

North Hobart with your parents since 2021. They are both in their late seventies and your father suffers from leukaemia.

You had to cease work due to a workplace injury where you fell and suffered injury to your foot. There was a stressful and protracted legal process that followed, and ultimately you did not receive any workplace compensation.

You have experienced long-term homelessness up until recent years when you returned to live with your parents. Your life has apparently stabilised. You describe yourself as being withdrawn and reclusive, spending almost all of your time at home with your parents.

I accept that between you threatening remarks were made during the exchange that followed the car alarm sounding and that you felt threatened by the complainant's actions in coming onto your property. I accept that the complainant was swinging his arms at you before you struck him the weapon a number of times, but on any view your response was excessive and extremely dangerous.

You could have and should have retreated inside the property when the complainant came towards you, though I accept too, that in the moment, you had no way of knowing whether he would attempt to enter the unit itself. You had legitimate concerns for your safety and for the safety of your parents. I take account too of your physical disability and the limitations which arise from that. You were confronted by the complainant and had only a short period to assess the appropriate level of response. You nevertheless accepted that in the moment, you went too far.

I have received a victim impact statement. I am not inclined to accept all of it, in particular that the complainant no longer feels safe in public. This situation arose directly from his aggression; it was not an unprovoked action on your part.

You appear before the court with relevant prior convictions, and whilst you are not to be punished again for those, they disclose a tendency towards aggressive behaviour.

The primary sentencing considerations are, again, personal and general deterrence. While this episode began with your attempting to defend yourself, your parents and their property, it escalated beyond a reasonable response to those threats, which you accept by your plea of guilty. I had you assessed for community based orders, and you were assessed as unsuitable for reasons I consider valid. In the circumstances, the appropriate sentence in response to your conduct is a term of imprisonment. From the indictment you are convicted and you are sentenced to ten months' imprisonment.

I have considered the question of whether some or all of that sentence should be suspended in accordance with the approach articulated in and required by the High Court decision in *Dinsdale*. Having regard to the circumstances of the offending, and your circumstances generally, and your plea of guilty, I have determined that the relevant sentencing considerations can be met if I suspended the operation of that sentence. Accordingly, I suspend the sentence on condition that you are of good behaviour for a period of three years and commit no offence punishable by a term of imprisonment during that time.

The State seeks a forfeiture order and I make the forfeiture order sought by the State.