

Wayne Harris, you were found guilty by a jury of assault. It is my responsibility to make findings of fact based on the evidence but my findings must be consistent with the verdict. Facts adverse to you must be proved beyond reasonable doubt.

Late in the afternoon of 11 August 2022 you were in Princes Square with a group of others including Michael Cocker. Gavin Campbell then joined the group. You and Mr Cocker became hostile towards Mr Campbell. He was pushed to the ground and then violently assaulted. Mr Cocker pleaded guilty to assault. The only real issue at your trial was whether you also assaulted Mr Campbell. The jury was satisfied beyond reasonable doubt that you did. Mr Campbell's evidence was that he was assaulted by two men. He described how he was pushed over by you and punched and kicked to the head and body by you and Mr Cocker. The assault commenced while he was still in the park. He managed to get away at some point but was then restrained, taken to another part of the park where the assault continued in the same way. Mr Campbell was extremely intoxicated and, in some respects, his evidence was vague. But I find his account to be true, not least because most of the essential parts of it were corroborated by the evidence of Melanie Morris, who happened to be driving past at the time. She was so concerned about what she saw that she took a photo, then drove around the block before taking more photos and a video on her phone. Even without the photographs and video I found Ms Morris' evidence to be compelling and I accept it. She was able to give a calm, rational, independent and, I find, accurate account of what she observed. Ms Morris saw the assault already in progress. The first thing she saw was two men punching another man against the park fence. She did not know you, but her description and the other evidence establishes that those two men were you and Mr Cocker, and the man being punched was Mr Campbell. You and Mr Cocker were readily distinguishable from each other by clothing and build. Mr Cocker was wearing a hi-vis jacket. Accordingly, I will describe what Ms Morris saw by reference to who it must have been. She saw you punch Mr Campbell to the face. She said that, at that point, Mr Cocker seemed to be taking direction from you and was holding Mr Campbell up. She saw you and Mr Cocker, one on each side, grab Mr Campbell and walk him up St John Street towards the Frederick Street entrance. She took a photograph of that. After parking her car she returned to take photographs and the video of the assault which was still going on. By this time you were at the south east corner of the park. Mr Cocker is captured on the video forcefully kicking Mr Campbell while you were standing nearby. Ms Morris saw a mobile phone in your hand, heard you asking for the number and saw Mr Cocker strike Mr Campbell again. Although it is not shown on the video or photographs she then saw you grab Mr Campbell's head and strike him.

I am satisfied that you actually assaulted Mr Campbell by applying force to him. I am satisfied that you are criminally responsible for all the force applied to Mr Campbell from start to finish whether it was applied by you or Mr Cocker, because you shared a common intention to assault him. You were in it together. The most serious force included kicking and punching to the head and body while Mr Campbell was on the ground and you actually did some of those acts. He was outnumbered and unable to defend himself. What motivated this assault has not been established. It may simply have been an argument fuelled by the intoxication of all the participants. Mr Campbell gave evidence that his phone and bag containing personal items were taken. Ms Morris saw you with what I am satisfied was Mr Campbell's phone. However you are not charged with robbery and so you are not to be sentenced for that crime.

You are now aged 50. You have no dependants. You have held some employment including as a painter in a family business, but your entire adult life has been marred by alcohol abuse. You have a very long criminal record most of which derives from alcohol abuse. Your record includes many alcohol related driving offences, anti-social offending, dishonesty, breaches of bail and breaches of family violence orders. There are a considerable number of convictions for resisting police. Most relevantly you have convictions for either assault police or common assaults committed in 1993, 1995, 2004, 2007, 2010, 2012 and 2015. You have been to prison on many occasions. Most recently that was in 2019 when you were sentenced to a total term of two years for multiple driving offences, evading police, breaching bail and dishonesty, but not for violence. You have only recently obtained stable housing. It is most unfortunate that imprisonment will result in the loss of that housing but no sentence other than imprisonment is appropriate.

In this assault Mr Campbell suffered a broken nose, and other bruises and abrasions to his head and upper body. He was cleared of any other serious injury, but there was a real possibility that he could have been more seriously hurt given the number and force of the blows inflicted upon him. As is so often the case for such crimes, the main ongoing effect on Mr Campbell is psychological. His victim impact statement describes how he became and remains anxious and frightened when in public. He still requires ongoing counselling. All of that is to be expected. No doubt he has other issues, but he was subjected to a violent attack in a public place, to which at least Ms Morris was exposed as well. Courts must condemn such displays of public violence.

Mr Cocker was sentenced to imprisonment for 12 months, four months of which was suspended. That sentence was cumulative to a 20 month sentence he was already serving. As between you and Mr Cocker there is little difference in the objective seriousness of your crime or your moral culpability. However there are differences in your personal circumstances which warrant a harsher sentence, although there remains some need for proportionality as between you. His record, overall, was not as poor as yours although he did have a conviction in Victoria in 2014 for armed robbery and criminal damage, and in 2017 for assault police. There were parole and totality issues which applied to Mr Cocker which do not apply to you. Perhaps most significantly he pleaded guilty. In my assessment there is little prospect of your reform, but you should have the opportunity to transition back into the community. I will thus allow some eligibility for parole but not until you have served a term which reflects the need for punishment, denunciation and deterrence. You were taken into custody on the day the verdict was returned and so the sentence I impose will commence then.

Wayne Harris, you are convicted and sentenced to imprisonment for 18 months from 13 August 2024. I order that you not be eligible for parole until you have served 12 months of that term.