

STATE OF TASMANIA v BRAYDON LEIGH WHITEROAD 3 SEPTEMBER 2024
COMMENTS ON PASSING SENTENCE **JAGO J**

Mr Whiteroad, you have pleaded guilty to two counts of assault contrary to s 184 of the *Criminal Code*. The victim of your crimes was your partner, whom I shall refer to as "S". You and S formed a relationship in May 2019. You lived together from 2021. In December 2021 you had a child together. Following the birth of that child S suffered with post-natal depression and some issues arose within the relationship. These issues were exacerbated by you and S finding yourselves without stable accommodation and with a newborn. It was a stressful time and from early 2022, the relationship became quite volatile. Arguments became frequent and you began to display abusive behaviour towards S. The matters to which you have pleaded guilty are not isolated incidents.

On 1 May 2022, when you and S were living at a residence in Sisters Creek, S became upset and started talking about suicide. I infer, it was most likely a reflection of the difficulties she was experiencing with her post-natal depression. Rather than being supportive, your response was simply cruel and nasty. You said to her, "Here's a fucking rope, here you go" and you placed a dog lead around her neck. This constitutes the first count of assault.

On the evening of 30 May 202, you and the complainant argued. You began to pack your things intending to leave the residence. There was verbal abuse exchanged between the two of you. As you went to exit the home, S stood in front of the door. You grabbed her by the arms and shirt and grabbed her by the shoulder and pushed her around. You then grabbed her by the throat with both hands and squeezed. You squeezed her throat for up to ten seconds. S felt dizzy and light headed and was unable to breathe properly. She thought she was going to black out. You desisted, let her go and left the residence.

Afterwards, the complainant's neck started swelling. She went to her father's home. She was very distressed. He observed bruising and marks on her neck. Police and ambulance were called. Attending police also noted bruising to both sides of S's neck and when ambulance personnel arrived they noted that she appeared scared and also observed visible bruising, redness and swelling to her throat. She also had redness to her chest and bruising to her left, lower leg. She had a wheeze and a raspy voice.

S was taken to the hospital where the medical staff documented bruising on the left side of the neck, mild bruising on the right side of the neck, a red line around her neck consistent with a necklace being pulled, tenderness to the left forehead and bruising to both knees, her left calf and both thighs.

You were subsequently arrested. You were interviewed by police. In respect to the dog lead incident, you admitted that you had said words to the effect of "Here's a fucking rope, there you go". You agreed you threw the rope at her and "probably" put the lead over her neck but could not clearly recall.

In respect to the incident on 30 May, you agreed that there had been a significant argument and that you were trying to leave. You admitted grabbing S by the arms and shoulder and "throwing her around a bit". You admitted that you had placed your hands around her neck and held her by the throat for about five seconds. You denied, however, that you had used sufficient force to cause the injuries that S sustained. You now accept that you did, in fact, cause those injuries.

I infer from the injuries caused that the pressure you applied to her neck was far from insubstantial.

After these incidents, you and S separated for a period. The relationship has since resumed. S has declined to provide a victim impact statement. That, of course, does not mean she was not badly impacted by your crimes. Whilst I accept the first incident resulted in no injury, it was, as I have commented, a nasty and cruel act and was particularly demeaning and unsupportive of her. The second act resulted in serious injury and her demeanour, as observed by others after the incident, clearly demonstrates that she was scared and upset by your behaviour.

You are 27 years of age. You have no prior convictions of relevance. The only matters recorded on your criminal history are some traffic infringement matters. You have a strong industrial record. You have worked as a chef and as a fly in/fly out contract worker. You are currently working as an arborist. You have worked your way up to a team leader position in that field and you are well regarded by your employer. I am told you have prospects of further advancement in that field of employment.

To your credit, you and S have worked hard on addressing issues within your relationship. After these incidents occurred, there was a Family Violence Order in place. You complied with the terms of that Family Violence Order. S, in fact, sought variations of that Family Violence Order during its currency to allow for there to be contact between you and her. Once the Order permitted it, the two of you resumed living together and I am told there have been no further difficulties within the relationship. The Family Violence Order expired in May 2023. Both you and S have worked hard to resolve the issues within your relationship. Each of you has undertaken counselling, and I am told the way you now communicate with each other over issues that may arise is much improved. The fact that there has been no further offending since May 2022, so a period of more than two years now, counts in your favour and is indicative, in my view, that these incidents were out of character and arose during a difficult period within the relationship. I am satisfied they are unlikely to be repeated and therefore specific deterrence does not attract significant weight in this sentencing exercise.

I take into account your pleas of guilty. Whilst it could not be said that they were entered at an early stage, it is noteworthy that you were originally charged with additional offences. They have not been proceeded with and you have pleaded guilty to matters which are largely consistent with the admissions you made to police on interview. The pleas of guilty still retain mitigatory value because S has been spared the ordeal of giving evidence in circumstances where I suspect, for several reasons, it would have been difficult for her to do so.

Family violence crimes are always serious. They inherently involve a breach of trust and are typically committed against vulnerable complainants. S was having significant difficulties at the time these crimes occurred. She deserved your support and assistance but instead, you reacted to her with violence. 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. That said, the Court must also recognise the individual circumstances of the criminal offending. As noted, I am satisfied that this was out of character for you, given your lack of prior convictions and the fact that there has been no further offending since May 2022. You have recognised your wrongdoing and you have worked hard to develop new skills and understanding to ensure that this sort of behaviour is not repeated. In all the circumstances, I am of the view that the seriousness of your behaviour warrants a period of imprisonment, but given the individual circumstances

pertaining to you, and what I assess to be solid prospects of reform, it is appropriate that the period of imprisonment be wholly suspended. You need to very clearly understand however, Mr Whiteroad, that if you are foolish enough to breach the terms of the suspended sentence, a Court must activate it and require you to serve it unless it is unjust to do so.

I make the following orders. You are convicted of both crimes of assault. You are sentenced to five months' imprisonment, the execution of which will be suspended on condition that for a period of two years you commit no offence punishable by imprisonment. I decline to make a declaration pursuant to s 29A of the *Family Violence Act*. Pursuant to s 13A of the *Family Violence Act*, I record both crimes as family violence offences.