

STATE OF TASMANIA V BRAYDEN ALLAN JAMES ION
COMMENTS ON PASSING SENTENCE

9 AUGUST 2024
WOOD J

The defendant, Brayden Allan James Ion, has pleaded guilty to assault contrary to s 184 of the *Criminal Code*.

On 15 January 2023 the complainant, Zachariah Alnasser, was socialising with friends at a number of nightclubs in Salamanca, Hobart.

At approximately 12:30 am, the complainant and his friends had a verbal altercation outside the Observatory Bar with a group of men including the defendant. The altercation escalated, and members of both groups began to push and shove each other. Both the complainant and the defendant were in the midst of that altercation.

The complainant pulled on the shirt of a man who was a friend of the defendant's and moved him out of the way. Then the complainant moved forward and pushed the same man to the face region. The contact was forceful but brief, and the man was propelled away but did not fall to the ground. The defendant saw that application of force but believed his friend had been punched.

On seeing that, the defendant stepped toward the complainant and brought his elbow down in a swift movement, hitting the complainant to the temple. The complainant instantly felt pain. He fell to the ground but did not lose consciousness and immediately rose to his feet. The defendant left the scene.

The complainant felt nauseous and was in pain, and walked home. He was still in pain on 17 January 2023, two days later, and he attended the Royal Hobart Hospital. A CT scan revealed a depressed left temporal fracture, with swelling and tightness to his eye, and jaw pain. It was considered likely that the injury would resolve on its own, without surgery.

The complainant suffered a period of intense physical pain, and his injuries impaired his ability to perform daily activities like eating, sleeping, and speaking. For weeks, he endured constant migraines. He had to take approximately three weeks' leave from his job and his preparations for university were significantly disrupted. He describes in his victim impact statement how his life has been detrimentally affected in other ways, including socially and psychologically.

The defendant has a relevant prior conviction. Just one month before this assault, he was sentenced by me to a wholly suspended term of imprisonment of five months on conditions that he not commit any offence that could attract a term of imprisonment for two years, community service, and supervised probation.

That crime was committed on 20 November 2021 and involved a drunken intrusion by the defendant and a friend into a birthday function at a bar venue in Salamanca. In the resulting altercation when the complainant pushed the defendant's friend to the face, the defendant retaliated and punched the complainant to the face. The complainant sustained facial fractures. It was, like this case, a single forceful blow to the face resulting in serious facial injury.

There is before me an application by the State to breach the sentence of suspended imprisonment pursuant to s 27(4)(a) of the *Sentencing Act* 1997. At the time of that offending, the defendant was 20 years of age.

The defendant was 23 at the time he committed this second crime of assault. Until his recent remand in custody pending sentence, he was employed as an apprentice carpenter, and in his fourth year of his apprenticeship. I have a reference from his employer who speaks highly of his work ethic as a valued employee and his character traits, such as his loyalty and also his respect for older citizens. His employer remains supportive and there is the potential for him to be able to return to his employment and complete his qualification.

The defendant has a close and supportive family and resides in the family home. The defendant is conscious that his actions and repercussions, and the prospect of imprisonment, have had a significant impact on his family. He is ashamed and remorseful, and feels he has let his family and employer down.

The defendant is involved in amateur and professional competition fighting and has an association with a particular gym. He trains and volunteers his time to training people and he has part-time work at the gym as a trainer. The sport condemns any fighting outside of the "ring". He has provided references from people associated with the gym who hold responsible positions within the public service. They are aware of this matter and his earlier offence, and they still speak in positive terms of his character and his role in mentoring others, and his genuine remorse.

The defendant's actions have tarnished the sport and he has let down the people he knows and respects who work hard to maintain its reputation. He has also jeopardised his future in the sport as both a competitor and trainer.

I note that he indicated a plea of guilty at an early stage and should receive the mitigatory weight of that plea.

In relation to the incident, the defendant had consumed some alcohol but was not intoxicated. I note that he did not initiate the violence but stepped in and inflicted a forceful and decisive blow when he thought his friend had been punched to the head.

The assault was a response to the aggression and violence of others; he did not initiate the aggression and, in that sense, his actions were reactive. There was, however, at the time of the assault, no need to protect his friend, and his violence must be seen as an act of retaliation.

Mr Ion has already had one salutary lesson and he should not have needed another. He knew very well that fractures can result from a single blow to the facial region. It was a blow to the temple and it is just good fortune that it did not have more serious or even fatal consequences.

I have received a Community Corrections report dated 26 July 2024 and received additional helpful information from the author of the report, Mr Oliver Jaeger, this morning.

The defendant's response to community service has been compliant but there have been a number of absences. He has completed a large number of the 98 hours that were imposed in that original sentence, but his attendance was not what it might have been. The dates provided by Community Corrections were sporadic, and there was a lack of consistency in the arrangements. I accept that this contributed to a level of poor communication. Importantly, though, he was compliant and his work and attitude is described in positive terms. I note that pursuant to the suspended sentence he was directed to attend the EQUIPS aggression program in mid 2023 and his level of participation and insight was described as excellent. I note in

particular that not only did he find it helpful but he has reflected and is self-critical about some of his behaviours and attitudes.

The question for me is whether it is unjust to activate the suspended sentence of five months' imprisonment. Unless it is, I have no discretion and the sentence must be activated. The general approach of the courts is that sentences should be activated in the case of a breach. After all, a suspended sentence is intended to be a last chance to avoid imprisonment and if not revoked, it tends to undermine the integrity of the system of suspended sentences and their effectiveness in deterring other offenders.

Considering whether an order activating the sentence of 5 months' imprisonment would be unjust, and whether an individual case should be regarded as an exception to the general rule, depends on an evaluation of the individual circumstances of each case. It is to be borne in mind that the objective of the suspended sentence option is reformatory as well as penal: Neasey J in *Greaves v Smith* [1986] Tas R 120 at 7.

In this case, the breaching offence is a clear and blatant breach of the court order – it is a repetition of the same sort of violence as the original offence. The time lapse from the imposition of the suspended sentence to when the breaching offence was committed is extremely short.

These considerations weigh in favour of revocation.

On the other hand, I do not see that the defendant has turned away from a path of reform. In fact, it is plain that he is making a genuine attempt at rehabilitation and the suspended sentence that I imposed has been having the desired effect. He has not lapsed into an unlawful way of life. It is significant that the terms of the suspended sentence I imposed in December 2022 had not effectively taken hold prior to the breaching offence.

Since January 2023, he has committed one breach of bail but there is no suggestion of other offending. He has strong family and community support and sound personal values conducive to his rehabilitation. The law recognises that as a young offender, there is potential for reform as the particular individual matures and develops insight, judgement, self-control, and an appreciation of the seriousness and consequences of his or her criminal conduct. In the case of Mr Ion, this process of rehabilitation is well underway and I note his excellent response to the EQUIPS aggression program, his self-criticism, and his insight.

I note too that the time he has spent in custody, which is almost two months, has been a strong personal deterrent. The sentence should not be more severe than is warranted in all the circumstances. I have concluded that for this particular offender, he has served enough to be to an effective sanction and to send a message to him and others about the punitive effect of suspended sentences. I am also satisfied that to effectively resuspend the balance of the sentence would have a strong deterrent effect and encourage Mr Ion's further efforts towards his rehabilitation.

I am satisfied that an exceptional course is warranted. In light of all of the considerations I have referred to, I conclude that in the circumstances of this particular case, it would be unjust to activate the suspended sentence of five months.

Informed by the considerations I have referred to, I will impose a substituted sentence of a partially suspended sentence. I will impose five months' imprisonment backdated to 11 June 2024, the balance from today suspended on very strict conditions.

In determining the sentence for the new matter of assault, this is a case where it is appropriate in my view to give weight to his rehabilitation, while imposing a sentence which will be effective as a general deterrent and reflect the seriousness of the crime and the harm he has caused to the complainant. I am satisfied that in this particular case, it is appropriate to again take an exceptional course and impose a sentence which does not involve an immediate term of imprisonment. I am satisfied that a Home Detention Order is the appropriate sentence in all the circumstances. If not for this sentence of home detention, I would have imposed a term of imprisonment.

Home detention is a heavy sentence. It is a punitive order, involving detention in a person's home, depriving them of ordinary freedoms, restraining their movements, and subjecting them to the prospect of scrutiny by authorities at any time. You will be able to work but may be required to forfeit some of your employment due to the requirements of the home detention order. There will be strict conditions and if they are breached, you will be brought back to Court and an actual term of imprisonment may be substituted.

I will impose an additional requirement requiring you to return to Court for review of your progress.

In relation to the assault, I record a conviction and I impose a Home Detention Order of nine months from today. I make an order that you must, during the operational period of the order, remain at [address as specified], at all times unless approved by a probation officer. I impose all of the core conditions set out in s 42AD(1). These include an obligation that you not commit an offence punishable by imprisonment for the period of the order, which is nine months from today.

I impose the following additional conditions. First, you must submit to electronic monitoring for the operational period of nine months, and the statutory conditions concerning electronic monitoring set out in s 42AD(1)(h) are imposed.

Further, you must attend the Community Corrections office at Level 1, 75 Liverpool Street, Hobart, immediately upon your release from custody today (and no later than 4:00 pm today) for induction onto this order. You must maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact via this device at all times. You must submit to the supervision of a Community Corrections officer as required by that officer. Additionally, you must not take any illicit or prohibited substances. Illicit and prohibited substances include: any controlled drug as defined by the *Misuse of Drugs Act 2001*; any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride, or Pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication. You must not consume alcohol, and you must, if directed to do so by a police officer or Community Corrections officer, submit to a breath test, urine test, or other test, for the presence of alcohol. You must, during the operational period of the order, maintain in operating condition an active internet service and landline, provide the contact details to Community Corrections, and ensure that the electronic monitoring device is connected to this internet service at all times.

Finally, you must appear before this Court for review of your compliance with this order on Monday 21 October 2024 at 4.15 pm and subsequently at such days and times as required.

I also impose a Community Correction Order for a period of two years, which has a special condition that you must complete 98 hours of community service in that time. You are subject to the statutory core conditions of a Community Correction Order. Further, you must appear before this Court on Monday 21 October 2024 at 4.15 pm for review and subsequent dates as required by this Court. You must, during the operational period of the order, submit to medical, psychological, or psychiatric assessment or treatment as directed by a probation officer.

Having concluded that it would be unjust to activate the suspended sentence of five months' imprisonment, I make the following order pursuant to s 27(4C)(b) of the *Sentencing Act*. I substitute a sentence of five months' imprisonment, backdated to 11 June 2024. The balance from today is suspended on conditions that you must not commit any offences that could attract a sentence of imprisonment for a period of two years from today, and that you comply with the Community Correction Order I will now impose on this matter in exactly the same terms as the Community Correction Order I have imposed on the new crime of assault. So that will require you to return to Court at the same date and time for review. I order a review report to be provided by Community Corrections in relation to Mr Ion's progress for that date.