

STATE OF TASMANIA v JACK ANDREW COLE
COMMENTS ON PASSING SENTENCE

25 OCTOBER 2024
ESTCOURT J

The defendant, Jack Andrew Cole, who was 27 years old at the time of the offending, has pleaded guilty to one count of assault. The complainant is Dylan John Blake, who was born on 18 September 1997.

On 7 January 2022, the defendant and the complainant attended the engagement party of mutual friends at the Royal Yacht Club in Sandy Bay. At approximately 12:21am on the 8 January 2022, the complainant was standing outside the front entrance of the Yacht Club ready to leave and the defendant was sitting on a seat in the same area. The defendant and complainant entered into a verbal altercation. Approximately five minutes after, the complainant gestured for the defendant to come towards him. The defendant got up from the seat and kicked the complainant to the side of his body. The complainant attempted to punch the defendant. This altercation lasted for approximately ten seconds before the defendant returned to his seat.

About a minute later, the defendant got up from his seat and placed his phone against the window. The State assert that the purpose of placing the phone in this position was to film the events to follow. The defendant approached the complainant and attempted to punch him. The defendant and the complainant exchanged a number of punches back and forth, with the defendant connecting with the side of the complainant's head on at least one occasion. During the exchange of punches the complainant fell to the ground and the defendant continued to punch him while he was on the ground. The defendant walked over and retrieved his phone. As the complainant attempted to get up from the ground, the defendant walked in his direction and kicked him either to the head or to the body. Following the kick, the complainant rolled onto his back, and a large amount of blood can be seen coming from his head on the CCTV footage that was obtained. A number of people assisted the complainant to stand up and the defendant left the yacht club.

The complainant's injuries were assessed at the Royal Hobart Hospital on 8 January 2022. He had two swollen black eyes, bruising to the left ear and dried blood present in his nose. A CAT scan revealed that the complainant's nose and both of his cheek bones were broken. The broken bones extended into the bottom and sides of the eye socket. The complainant's front teeth and a wisdom tooth were chipped.

On 23 January 2022, the complainant underwent surgery in respect of the broken bones, which required numerous plates and screws. After the operation he was seen as an outpatient on more than three occasions. He had some residual numbness in the tip of his nose and upper lip, and permanent scars as a result of the surgery.

On 8 January 2022, the defendant sent the complainant a text message apologising for what had happened and saying that he had no recollection of what had occurred.

On 19 April 2022, the defendant was arrested

I have a Victim Impact Statement from the complainant. He has had to come to terms with the drastic change to his appearance, continually having to relive what happened that night, and having people staring at him and having to explain over and over again, why he looked like a different person. He distanced himself from his friends as a coping mechanism, and it took a toll on his relationship. He was constantly irritable due to the pain and trauma. His partner

was, and still is, very anxious at any time he leaves the house. They both fear seeing Mr Cole again. The complainant does not go out much anymore.

The defendant has two prior convictions for common assault in 2018.

When the defendant came before me in February this year, he was very much a reformed character, having himself sought help in addressing and overcoming his alcohol and substance abuse problems and being in employment, and not having re-offended in any way. Accordingly, I adjourned sentence and have continued to do so until today. He has not re-offended and has maintained a good work ethic.

I have had the benefit of a pre-sentence report which deems the defendant suitable for home detention and suitable for community service.

This was an extremely serious assault with lasting consequences for the complainant. It is another case of alcohol fuelled violence by a young man against an innocent victim causing serious injury. Despite the defendant's remorse and his reform and the consequent lack of need for personal deterrence, the case calls for a weighty sentence in the interests of general deterrence and denunciation.

The defendant is sentenced to 12 months' home detention and 98 hours of community service on the charge of assault, for which he is convicted. As to the application for a breach of the defendant's suspended sentence for trafficking in a controlled substance, I am of the view that in all the circumstances, and the lack of any similarity between that offending and the current offending, it would be unjust to activate any part of the sentence and I make no order.

The sentencing orders are as follow:

The Home Detention Order is to contain all of the core conditions contained in s 42AD(1) of Part 5A of the Sentencing Act 1997. With specific consideration to s 42AD(1)(g) and (h), the following conditions are added to the Order:

- you must, during all of the operational period of the order, submit to electronic monitoring, including by wearing or carrying an electronic device;
- during the period that you are required to submit to electronic monitoring:
 - (a) you must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
 - (b) you must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring; and
 - (c) you must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring, including in relation to the installation, attachment or operation of a device, or a system, used for the purposes of electronic monitoring by a police officer, a probation officer or prescribed officer; or another person whose functions involve the installation or operation of a device, or a system, used for the purposes of electronic monitoring.

Finally, the order is to contain the following special conditions:

- you must, during the operational period of the order, remain at [address specified] all times unless approved by a probation officer;
- immediately upon your release from Court, you must attend the Community Corrections office at Level 1, 75 Liverpool Street, Hobart for induction onto this order;
- you must, during the operational period of the order, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through this device at all times;
- you must submit to the supervision of a Community Corrections officer as required by that officer;
- you must not, during the operational period of the order, 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; and
- you must not, during the operational period of the order, 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.

In addition, I make a community corrections order with an operational period of two years. The order is to include all of the core conditions, including an order that you report immediately upon leaving here to Community Corrections, and a special condition that you must, within the operational period, satisfactorily perform 98 hours of community service as directed by a probation officer or a supervision officer.