

Mr Ciantar, you have pleaded guilty to one count of Criminal Code assault. Mid-afternoon on 8 June 2023, the complainant was walking along Oldaker Street in Devonport. He had just finished work. You were riding a bike, travelling in the opposite direction, along Oldaker Street. Both of you were on the footpath. As you approached each other, the complainant moved to the right side of the footpath to make room for you to pass by. As you did so, your bike made accidental contact with the left side of the complainant's torso. You then brought your bike to a stop and said, "Why did you run into me?". You then got off your bike and walked towards the complainant. The complainant raised both of his hands in front of him, with open palms, indicating to you that you should not approach any closer. You responded by punching the complainant with a closed fist to his face. You said, "That'll teach you for next time, you better watch your back".

The force of the punch did not cause the complainant to fall. He continued walking. His nose soon began to bleed badly. He entered a nearby business on Oldaker Street, where his partner worked, and received some first aid assistance. Police were called.

The complainant was transported by ambulance to Mersey Community Hospital. He sustained two fractures as a consequence of your punch – one to the bone around his right eye socket, and one to his right cheek bone. Surgery was not necessary but the complainant experienced considerable pain for some time afterwards.

Police found you in a nearby street. You claimed the complainant had knocked you off your bike, which was not true.

The complainant has provided a Victim Impact Statement. For some time after the assault, his face was badly bruised. This was confronting for his young step-son to see. He was forced to take time off work, which had a financial impact upon the family. He had to travel to Hobart to consult with a facial surgeon and has been left feeling apprehensive. He is no longer confident out in public. He has had to limit some of his recreational pursuits because of the injuries he sustained to his face.

Striking another person to the head and face area is an inherently dangerous thing to do. The complainant was standing on a footpath. He could easily have fallen and struck his head. All too often courts have to deal with matters where even a single punch in such circumstances can, and often does, lead to life changing injury or even death. On this occasion, it is fortunate the injuries sustained by the complainant were not worse and resolved without the need for surgical intervention.

You are 42 years of age. You have relevant prior convictions. In 2005, you were convicted of the offences of assault a police officer and resist a police officer. In 2006, you were convicted of common assault. In 2008, you were found guilty of an offence of common assault, but placed onto an undertaking without conviction. In 2017, you were convicted of common assault. In addition to these matters, you have a number of convictions for bail offences, offences contrary to the *Misuse of Drugs Act* and various offences against good order.

Pertinent to this sentencing exercise is the fact that you suffer from an acquired brain injury. When you were in Grade 10, so aged approximately 16 years old, you were struck by a car.

You sustained a serious head injury and were placed into a medically induced coma for three months. You suffered a very traumatic brain injury. You sustained injury to your frontal and temporal lobes. The areas of your brain that were damaged have a strong role in social cognition and manage a person's ability to control emotions, process sensory information, manage behaviours and exercise judgement. You have been left with significant impairment.

Your family describes you as now being a completely different person. You have disordered executive function, have difficulty in regulating your emotions and are prone to impulsive acts of aggression. Your memory, organisation and general processing are all now poor. You are prone to impulsivity, anger, depressed mood and emotional dysregulations.

I have a Forensic Psychological assessment from Dr Jennifer Wright. It is a detailed and helpful report. In her opinion, your traumatic brain injury directly contributed to your criminal conduct because of your "severe difficulty managing his feelings of anger and inhibiting his impulse to lash out". Dr Wright is also of the view that you would be highly vulnerable in a prison environment because of your disordered executive functioning. I accept your brain injury was a direct contributing factor to your offending and I will moderate my approach to sentence accordingly. Dr Wright considers you would benefit from a NDIS package. As part of my sentencing orders, I will impose a Community Correction Order in the hope that you may gain some assistance in organising this.

I take into account your plea of guilty. You initially entered a plea of guilty when this matter was before the Magistrates Court, but there was then some confusion, and you, in fact, sought leave to withdraw your plea of guilty. I am told that situation arose because you were confused about things – most likely a symptom of your brain injury. Your counsel rectified the situation on the same day that you sought leave to withdraw your plea. I will treat your plea of guilty as an early one.

I take into account that this assault involved a single punch, but of course it was entirely unprovoked, and it was violence directed towards a stranger who was simply going about his business on a public street. As noted, I accept that your brain injury played a role in the commission of the crime, but of course it is important the public be protected, and that you understand that such behaviour is simply unacceptable. General and personal deterrence remain relevant factors in the sentencing exercise, although the weight to be given to each must be adjusted in accordance with your acquired brain injury and your individual circumstances.

I am satisfied the objective seriousness of your crime requires the imposition of a sentence of imprisonment. I accept, however, that there are a number of factors which weigh against making you serve that period of imprisonment immediately. I intend to wholly suspend the period of imprisonment I impose, but Mr Ciantar, you must understand that it is most important that you accept assistance and continue to work hard at regulating your emotions and behaviour.

I make the following orders. You are convicted of the crime of assault. You are sentenced to a term of imprisonment of four months. The whole of that sentence will be suspended for a period of 18 months, on condition that you are not to commit any offence punishable by imprisonment during that time.

I also impose a 12 month Community Correction Order. The statutory core conditions of a Community Correction Order are imposed. These conditions will be set out in a document that

will be provided to you. In summary, they will include the following conditions that will apply for the entire operational period:

- You must not commit an offence punishable by imprisonment;
- You must report to a probation officer as required by the probation officer;
- You must comply with the reasonable and lawful directions of a probation officer;
- You must not leave or remain outside of Tasmania without the permission of a probation officer; and
- You must give notice to a probation officer of any change of address or employment before or within two working days after the change.

I also impose the following special conditions:

- You must during the operational period of the order submit to the supervision of a probation officer as required by the probation officer;
- You must comply with directions regarding referrals to and compliance with alcohol and drug services and mental health services;
- You must attend, participate in and complete the Equips Aggression programme and the Equips Addiction programme, if directed to do so by a probation officer; and
- You must, for the duration of the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment if directed to do so by a probation officer;

I order that you must report to Community Corrections, Devonport, by close of business tomorrow.

Mr Ciantar, I explain to you that if you do commit any offence punishable by imprisonment, and I emphasise the word "any", during the life of the suspended sentence, you can be brought back to this Court and an application made that you serve the period of imprisonment. The law is that a judge must activate it unless it is unjust to do so.

I make a compensation order in favour of [the complainant], in an amount to be assessed.